

# CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

MAURICE T. MOORE  
WILLIAM B. MARSHALL  
RALPH L. McAFEE  
ROYALL VICTOR  
HENRY W. DEKOSMIAN  
ALLEN F. MAULSBY  
STEWART R. BROSS, JR.  
HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRENK, JR.  
BENJAMIN F. CRANE  
FRANCIS F. RANDOLPH, JR.  
JOHN F. HUNT  
GEORGE J. GILLESPIE, III  
RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS D. BARR  
MELVIN L. BEDRICK  
GEORGE T. LOWY  
ROBERT ROSENMAN  
JAMES H. DUFFY  
ALAN J. HRUSKA  
JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID G. ORMSBY

DAVID L. SCHWARTZ  
RICHARD J. HIEGEL  
FREDERICK A. O. SCHWARZ, JR.  
CHRISTINE BESHAR  
ROBERT S. RIFKIND  
DAVID BOIES  
DAVID O. BROWNWOOD  
PAUL M. DODYK  
RICHARD M. ALLEN  
THOMAS R. BROME  
ROBERT D. JONES  
ROBERT F. MULLEN  
ALLEN FINKELSON  
RONALD S. ROLFE  
JOSEPH R. SAHID  
PAUL C. SAUNDERS  
MARTIN L. SENZEL  
DOUGLAS D. BROADWATER  
ALAN C. STEPHENSON  
RICHARD L. HOFFMAN  
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MAX R. SHULMAN  
WILLIAM P. DICKEY  
STUART W. GOLD  
JOHN W. WHITE

RECORDATION NO. 11951-4  
JUN 30 1980 - 12 10 PM  
INTERSTATE COMMERCE COMMISSION

TELEX  
PCA 233663  
WUD 125547  
WUI 620976

RECORDATION NO. 11951-B  
JUN 30 1980 - 12 10 PM  
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 11951  
JUN 30 1980 - 12 10 PM  
INTERSTATE COMMERCE COMMISSION

0-179A.190

JUN 26 1980

Fee \$ 100.00

ICC Washington, D. C.

COUNSEL  
CARLYLE E. MAW  
ALBERT R. CONNELLY  
FRANK H. DETWEILER  
GEORGE G. TYLER

ROSWELL L. GILPATRICK  
L. R. BRESLIN, JR.  
GEORGE B. TURNER  
JOHN H. MORSE  
HAROLD R. MEDINA, JR.  
CHARLES R. LINTON  
ALLEN H. MERRILL

4, PLACE DE LA CONCORDE  
75008 PARIS, FRANCE  
TELEPHONE: 265-81-54  
TELEX: 290530

33 THROMORTON STREET  
LONDON, EC2N 2BR, ENGLAND  
TELEPHONE 01-606-1421  
TELEX: 8814901

CABLE ADDRESSES  
CRAVATH, N. Y.  
CRAVATH, PARIS  
CRAVATH, LONDON E. C. 2

June 26, 1980

RECORDATION NO. 11951-C  
JUN 30 1980 - 12 10 PM  
INTERSTATE COMMERCE COMMISSION

MHC, Inc. (ConAgra, Inc.)  
Lease Financing Dated as of April 1, 1980  
10.75% Conditional Sale Indebtedness Due 1995

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a) and the Commission's rules and regulations thereunder, enclosed for filing and recordation on behalf of MHC, Inc., are counterparts of the following documents:

1. (a) Conditional Sale Agreement dated as of April 1, 1980, between Pullman Incorporated (Pullman Standard Division), North American Car Corporation and Chemical Bank;

(b) Agreement and Assignment dated as of April 1, 1980, between Pullman Incorporated (Pullman Standard Division), North American Car Corporation and La Salle National Bank, as Agent; and

2. (a) Lease of Railroad Equipment dated as of April 1, 1980, between MHC, Inc., ConAgra, Inc. and Chemical Bank; and

(b) Assignment of Lease and Agreement dated as of April 1, 1980, between Chemical Bank and La Salle National Bank, as Agent.

RECEIVED  
JUN 30 1980 - 12 05 PM  
FEE OPERATIONS  
I.C.C.

*Counter Paul* *Alan C. Hughes*

The names and addresses of the parties to the  
aforementioned Agreements are as follows:

(1) Agent-Vendor:

La Salle National Bank  
135 South LaSalle Street  
Chicago, Illinois 60690

(2) Vendee-Lessor:

Chemical Bank  
55 Water Street  
New York, N.Y. 10087

(3) Builder:

Pullman Incorporated (Pullman Standard  
Division)  
200 South Michigan Avenue  
Chicago, Illinois 60604

(4) Vendor:

North American Car Corporation  
222 South Riverside Plaza  
Chicago, Illinois 60606

(5) Lessee:

MHC, Inc.  
200 Kiewit Plaza  
Omaha, Nebraska 68131

(6) Guarantor:

ConAgra, Inc.  
200 Kiewit Plaza  
Omaha, Nebraska 68131

Please file and record the documents referred  
to above and cross-index them under the names of the  
Agent-Vendor, the Vendee-Lessor, the Builder, the Vendor,  
the Lessee and the Guarantor.

The equipment covered by the aforementioned  
documents consists of the following:

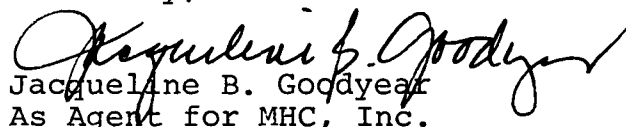
300 100-ton, 4,750 cubic foot covered hopper cars, AAR Mechanical Designation LO, bearing identifying numbers of the Lessee CAGX 700 through CAGX 999, both inclusive.

Also enclosed is a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents, retain one copy of the documents for your files and forward the remaining counterparts to me.

Thank you for your assistance.

Sincerely,

  
Jacqueline B. Goodyear  
As Agent for MHC, Inc.

Ms. Agatha L. Mergenovich,  
Interstate Commerce Commission,  
Washington, D.C. 20423

Encl.

ZZ

**Interstate Commerce Commission**  
Washington, D.C. 20423

6/30/80

OFFICE OF THE SECRETARY

Jacqueline B. Goodyear  
Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/30/80 at 12:10pm , and assigned re-recording number(s). 11951, 11951-A, 11951-B & 11951-C

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)



11951

RECORDATION NO. .... Filed 1425

JUN 30 1980 -12 10 PM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 4876-023]

CONDITIONAL SALE AGREEMENT

Dated as of April 1, 1980

Between

PULLMAN INCORPORATED  
(Pullman Standard Division),  
Builder,

NORTH AMERICAN CAR CORPORATION,  
Vendor,

and

CHEMICAL BANK,  
Vendee.

[Covering 300 4,750 cubic foot Covered Hopper Cars]

# CONDITIONAL SALE AGREEMENT

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\* This Table of Contents has been provided for convenience only and does not affect any interpretation of this document.

CONDITIONAL SALE AGREEMENT dated as of April 1, 1980, between PULLMAN INCORPORATED (Pullman Standard Division), a Delaware corporation (the "Builder"), NORTH AMERICAN CAR CORPORATION, a Delaware corporation ("NAC" or the "Vendor" as the context may require, all as set forth in Section 1.3 hereof), and CHEMICAL BANK, a New York banking corporation (the "Vendee").

The Builder has agreed to construct, sell and deliver to NAC, and NAC has agreed to purchase from the Builder and conditionally sell to the Vendee, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto (the "Equipment").

The Vendee is entering into a Lease of Railroad Equipment with MHC, INC. (the "Lessee"), and CONAGRA, INC., as guarantor (the "Guarantor"), substantially in the form of Annex C hereto (the "Lease").

LA SALLE NATIONAL BANK (the "Agent") is acting as agent for certain investors (the "Investors") pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") between the Lessee, the Guarantor, the Agent, the Vendee, NAC and the Investors.

In consideration of the agreements hereinafter set forth, the parties hereto agree as follows:

## ARTICLE 1

### ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Vendee Purchase Price; Assignment. The parties hereto contemplate that the Vendee will furnish 28% of the Vendee Purchase Price (as defined in Section 4.1 hereof) of the Equipment and that an amount equal to the balance of such Vendee Purchase Price shall be paid to NAC by the Agent pursuant to an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") between the Builder, NAC and the Agent. NAC will pay to the Builder the NAC Purchase Price (as defined in Section 4.1 hereof) pursuant to the terms of Section 4.4 hereof.

1.2. Lease Assignment. The Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, certain of its rights, title and interest in and to the Lease, pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto (the "Lease Assignment"), and the Lessee and the Guarantor will acknowledge and consent thereto pursuant to a Consent and Agreement substantially in the form attached to the Lease Assignment ("Consent").

1.3. Meaning of "Vendor". The term "Vendor" whenever used in this Agreement shall mean NAC before any assignment of its rights hereunder and, after any such assignment, both any assignee as regards any assigned rights and also any assignor as regards any rights hereunder that are retained or excluded from any assignment.

1.4. Purchase Order. Any contractual arrangements between NAC and the Builder insofar as they relate to the Equipment (the "Purchase Order") shall be superseded by this Agreement, and the obligations of NAC and the Vendee to purchase and pay for the Equipment shall be exclusively and completely governed by the conditions hereof.

## ARTICLE 2

### CONSTRUCTION AND SALE

The Builder shall construct the Equipment at its plant described in Annex B hereto and will sell and deliver the Equipment to NAC. NAC will purchase the Equipment from the Builder and accept delivery thereof and immediately thereafter and without placing the Equipment into service will sell conditionally and deliver the Equipment to the Vendee. Each unit of Equipment shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, NAC, the Vendee and the Lessee (such specifications and any modifications are called the "Specifications"). The Builder represents and warrants that (i) the design, quality and component parts of each unit of Equipment to be delivered by the Builder under this Agreement shall conform, on the date of delivery and acceptance thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any,

recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, (ii) none of such component parts will be used components, (iii) none of such units will have been used so as to preclude the original use thereof by the Vendee within the meaning of Sections 48(b)(2) and 167(c)(2) of the Internal Revenue Code of 1954 (the "Code") and (iv) each unit of the Equipment will be "new section 38 property" in the hands of the Vendee within the meaning of the Code when delivered to and accepted by the Vendee. NAC represents and warrants that (a) it has done nothing and will do nothing to preclude the original use of the Equipment from commencing with the Vendee within the meaning of Sections 48(b)(2) and 167(c)(2) of the Code or to prevent any unit of Equipment from being "new section 38 property" in the hands of the Vendee within the meaning of the Code and (b) to the best of its knowledge the representations and warranties of the Builder set forth in this Section are true and correct.

### ARTICLE 3

#### INSPECTION AND DELIVERY

3.1. Place of Delivery. Upon delivery by the Builder of the units of Equipment to NAC, NAC will immediately deliver such units to the Vendee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Vendee), freight charges and storage charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder to NAC and NAC shall not have any obligation to deliver any unit of Equipment hereunder to the Vendee subsequent to the commencement of any proceedings specified in clause (c) or (d) of Section 16.1 hereof or subsequent to the occurrence of any event of default (as described in Section 16.1 hereof) or event which with notice or lapse of time or both would constitute such an event of default. The Builder and NAC agree not to deliver any unit of Equipment hereunder (a) following receipt of written notice from the Vendee or the Agent of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, or (b) until it receives notice from the Agent and the Vendee that the respective conditions contained in Paragraphs 6 and 7 of the Participation Agreement have been met.

3.2. Force Majeure. The respective obligations of the Builder and NAC as to time of delivery are subject, however, to delays resulting from causes beyond the Builder's or NAC's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors. NAC's obligation hereunder to deliver the Equipment to the Vendee is subject to the delivery of such Equipment by the Builder to NAC.

3.3. Exclusion of Equipment. Any Equipment not delivered pursuant to Section 3.1 hereof and any Equipment not delivered and accepted hereunder for any reason on or before October 31, 1980, shall be excluded from this Agreement, and NAC and the Vendee shall be relieved of their respective obligations to purchase and pay for such Equipment. If any Equipment shall be so excluded, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions of this Section 3.3 or pursuant to Section 4.1 hereof, or in the event NAC and the Vendee are relieved of their respective obligations hereunder to accept or pay for any or all units of Equipment in accordance with the terms and conditions hereof for any reason whatsoever, NAC will be obligated to accept all such units completed and delivered by the Builder and to pay the full purchase price therefor when due, all in accordance with the terms of the Purchase Order. The Vendee agrees, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as it may be reasonably requested by NAC for the purpose of acknowledging and perfecting the interest of NAC in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

3.4. Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of NAC and the Vendee (who may be employees or agents of the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant and the Equipment. The Builder agrees to inspect the materials used in the construction of the Equipment in

accordance with the standard quality control practices of the Builder and the industry. Upon or after completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to the authorized inspectors for NAC and the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications and requirements and standards applicable thereto, any one of such authorized inspectors shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of NAC and the Vendee and are marked in accordance with Article 10 hereof; provided, however, that the Builder shall not thereby be relieved of any of its warranties set forth herein. By this Section 3.4, the Vendee and NAC are each appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit by NAC and the Vendee hereunder.

3.5. Responsibilities of the Builder and NAC After Delivery. Upon delivery by the Builder to NAC and by NAC to the Vendee hereunder of a unit of Equipment and acceptance thereof hereunder at the place specified for delivery, the Builder and NAC shall have no further responsibility for nor bear any risk of any damage to or the destruction or loss of such unit; provided, however, that neither the Builder nor NAC shall thereby be relieved of any of its respective warranties set forth herein.

#### ARTICLE 4

##### PURCHASE PRICE AND PAYMENT

4.1. Meaning of "Vendee Purchase Price" and "NAC Purchase Price"; Exclusion of Units. The base price or prices per unit of Equipment to be paid by the Vendee to NAC are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as may be agreed to by NAC, the Vendee and the Lessee. The term "Vendee Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the invoice or invoices of NAC delivered to the Vendee ("NAC's Invoice"), any freight or storage charges payable by the Vendee and, if the Vendee Purchase Price is greater than

the base price or prices set forth in Annex B, NAC's Invoice shall be accompanied by or have endorsed thereon the agreement or approval of the Lessee and the Vendee. The base price or prices per unit of the Equipment to be paid by NAC to the Builder are as set forth in the Purchase Order. Such base price or prices are subject to such increase or decrease as may be agreed to by the Builder and NAC. The term "NAC Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the Builder's invoice or invoices delivered to NAC (the "Builder's Invoice"), which shall be accompanied by or have endorsed thereon the agreement or approval of NAC. If on any Closing Date the aggregate Vendee Purchase Price of Equipment for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as to which the Vendee and the Lessee may have agreed prior to the delivery of the Equipment being settled for on such Closing Date), the Builder, NAC (and any assignee of NAC) and the Vendee will enter into an agreement effective as of the date of acceptance thereof excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee and the Lessee, as will, after giving effect to such exclusion, reduce such aggregate Vendee Purchase Price to not more than the Maximum Purchase Price (or such higher amount as aforesaid) and the Vendee shall have no further obligation or liability in respect of units so excluded.

4.2. Settlement and Closing Dates. The Equipment shall be settled for in such number of groups of units (the "Groups") of the Equipment delivered to and accepted by NAC and the Vendee as is provided in Item 2 of Annex A hereto. The term "Closing Date" with respect to any Group shall be such date as is specified by the Lessee by 10 days' written notice thereof to and with the concurrence of the Vendee, the Agent, NAC and the Builder (or such later date as all required funds are received pursuant to the Participation Agreement), but in no event shall any Closing Date be later than October 31, 1980. Such notice shall specify the aggregate Vendee Purchase Price of such Group. At least five business days prior to the Closing Date with respect to a Group, the Builder shall present to NAC the Builder's Invoice and NAC shall present to the Vendee and the Lessee NAC's Invoice for the Equipment to be settled for. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized or obligated to remain closed.



4.3. Indebtedness of Vendee to Vendor. Subject to the terms of this Agreement, the Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of the Vendee Purchase Price of the Equipment and hereby promises to pay the same in cash or immediately available funds to the Vendor at such place as the Vendor may designate, as follows:

(a) on the Closing Date with respect to each Group, an amount equal to 28% of the aggregate Vendee Purchase Price of the units of Equipment in such Group; and

(b) in 180 monthly installments, in arrears, as hereinafter provided, an amount equal to the aggregate Vendee Purchase Price of the units of Equipment in such Group less the aggregate amount paid or payable with respect thereto pursuant to subsection (a) of this Section (said portion of the aggregate Vendee Purchase Price payable in installments is called the "CSA Indebtedness").

4.4. Indebtedness to Builder. NAC hereby acknowledges itself to be indebted to the Builder in the amount of the NAC Purchase Price of the Equipment and hereby promises to pay the same in full in cash or immediately available funds to the Builder on the Closing Date with respect to each Group, at such place as the Builder may designate. Notwithstanding any provision herein to the contrary, in the event that NAC refuses or is unable for any reason (including its bankruptcy or insolvency) to perform its obligations pursuant to this Section 4.4, the Vendee shall have the right (but not the obligation) to perform such obligations and to pay the NAC Purchase Price for the units in such Group to the Builder, in which event the Vendee shall have the right to receive the payments to be made to NAC for such units pursuant to Section 4 of the CSA Assignment and, for all purposes of this Agreement and the CSA Assignment, the Vendee Purchase Price for such units shall be deemed to be the NAC Purchase Price therefor. Nothing herein shall be deemed to affect in any way the remedies available to the Vendee against NAC in such event.

4.5. CSA Indebtedness; Payment Dates; Interest.

(a) The installments of the CSA Indebtedness shall be payable monthly on the first day of each month, commencing on the first day of the month next succeeding the Interim Payment Date (as defined below) (each such date is called a "Payment Date"). The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of

which such indebtedness was incurred at the rate per annum set forth below. Interest on the unpaid balance of CSA Indebtedness shall be payable to the extent accrued on the first day of the month next succeeding the last Closing Date hereunder (the "Interim Payment Date"), and on each Payment Date thereafter. The amounts of principal of and interest on the CSA Indebtedness payable on each Payment Date shall be calculated to be substantially in proportion to the allocation of principal and interest on such Payment Date set forth in Schedule I hereto and the aggregate of such installments of principal shall completely amortize the CSA Indebtedness at maturity. The Vendee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule showing the respective amounts of principal and interest payable on each Payment Date.

(b) Interest on the unpaid balance of CSA Indebtedness shall be payable at the rate of 10.75% per annum; except that if the income from operations before disposal of assets, taxes and tax credit of the Guarantor for its fiscal year ended May 25, 1980, as reflected in the financial statements provided pursuant to Paragraph 10 of the Participation Agreement, is (i) less than \$17,000,000, interest shall be payable at the rate of 10.875% per annum or (ii) greater than \$25,000,000, interest shall be payable at the rate of 10.625% per annum. In the event that the interest rate determined in accordance with this subsection is not 10.75% per annum, this Agreement (including Schedule I hereto) will be amended to reflect the changed interest rate, which shall be effective from the Closing Date with respect to which such CSA Indebtedness was incurred.

(c) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the next succeeding business day.

4.6. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months, except that interest payable on the Interim Payment Date shall be computed on an actual elapsed day, 366-day year, basis.

4.7. Penalty Interest. The Vendee will pay interest at the rate of 1% per annum in excess of the rate determined in accordance with subsection (b) of Section 4.5 hereof (the "Penalty Rate") upon all amounts remaining unpaid after the

same shall have become due and payable pursuant to the terms hereof, or such lesser amount as shall be legally enforceable.

4.8. Currency of Payment. All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 or 16 hereof, the Vendee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

4.9. Liability of Vendee Limited to "Income and Proceeds from Equipment". Notwithstanding any other provision of this Agreement (including but not limited to any provision of Articles 16 and 17 hereof, except as set forth in this Section 4.9), but not limiting the effect of Article 23 hereof, the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to Section 4.3(a) hereof and the proviso to Section 13.3 hereof, shall not exceed an amount equal to and shall be payable only out of the "income and proceeds from the Equipment", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Vendee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Vendee or any assignee of the Vendee. As used herein the term "income and proceeds from the Equipment" shall mean

(i) if one of the events of default specified in Section 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of any Casualty Occurrence (as defined in § 7 of the Lease) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 13 or any other provision of the Lease (except any indemnity or other amounts paid or payable to the Vendee pursuant to § 6, 12, 20 or 30 of the Lease which is not required to be

paid over hereunder by the Vendee to the Vendor and any liability insurance proceeds payable to the Vendee under § 7 of the Lease) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of any Casualty Occurrence) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of any Casualty Occurrence) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Vendee Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this Section, it will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this Section.

## ARTICLE 5

## SECURITY INTEREST IN EQUIPMENT

5.1. Vendor To Retain Security Interest; Accessions Are Part of Equipment. The Vendor hereby retains a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease. Such retention of a security interest is solely to secure performance by the Vendee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Vendee), and, subject thereto, ownership of the Equipment shall upon delivery and acceptance pass to and remain in the Vendee subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Vendee Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Railroads, the Interstate Commerce Commission, the United States Department of Transportation or any other applicable regulatory body shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used herein.

5.2. Obligations upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Vendee Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor, except that the Vendor, if so requested by the Vendee at that time, will, at the Vendee's expense, (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby, and deliver such instrument to the Vendee at its address referred to in

Article 22 hereof, (b) execute and deliver at the same place, for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights existing or that may be acquired in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

## ARTICLE 6

### TAXES

6.1. General Tax Indemnification. Whether or not any of the transactions contemplated hereby are consummated, the Vendee agrees to pay and to indemnify and hold the Vendor harmless from all Taxes (as defined in § 6 of the Lease); excluding, however, (i) Taxes of the United States of America or any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured by the net income or excess profits of the Vendor, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Article 6, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its worldwide income without regard to the transactions contemplated by this Agreement shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; and (iii) Taxes which are imposed on or measured by the net income of the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Vendee has not agreed to pay or

indemnify against pursuant to this Article 6; provided, however, that the Vendee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in Section 6.2 hereof.

6.2. Claims; Contests; Refunds. If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Vendee. If reasonably requested by the Vendee in writing, the Vendor shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Vendee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) paying the same under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Vendee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor, which shall not be unreasonably withheld. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Vendee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Vendee the amount of such refund or interest net of unreimbursed expenses; provided, however, that no event of default set forth in Section 16.1 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and for so long as the same shall be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Vendee under or arising out of this Article 6, the Vendee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Vendee.

6.4. Survival. All of the obligations of the Vendee under this Article 6 shall survive and continue, notwithstanding payment in full of all other amounts due under this Agreement.

## ARTICLE 7

### MAINTENANCE AND CASUALTY OCCURRENCES

7.1. Maintenance. The Vendee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order and repair, ordinary wear and tear excepted.

7.2. Casualty Occurrences. In the event that any unit of Equipment shall suffer a Casualty Occurrence (as defined in § 7 of the Lease), the Vendee shall, promptly after it shall have received notice from the Lessee or has otherwise been informed of such Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the Casualty Payment Date (as defined in § 7 of the Lease), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as defined in Section 7.3 hereof) of such unit, together with an amount equal to accrued interest thereon as hereinafter provided. The Vendee shall file or cause to be filed with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this Section shall be applied (after the payment of principal and interest due on such date in respect of CSA Indebtedness not being prepaid) to prepay the CSA Indebtedness, without penalty or premium, ratably in accordance with the unpaid balance of each installment, together with all interest accrued on the portion of the CSA Indebtedness being prepaid. The Vendee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, calculated as provided in Section 4.5 hereof.

7.3. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Vendee Purchase Price thereof referred to in Section 4.3(b) hereof remaining unpaid on the respective Casualty Payment Date after giving effect to the rental payment due on such Date (but without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any



other unit). For the purpose of this Section, each payment of the Vendee Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Vendee Purchase Price of such unit bears to the aggregate original Vendee Purchase Price of all the Equipment.

7.4. Obligations upon Payment of Casualty Value.  
Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor, except that the Vendor, if so requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

## ARTICLE 8

### INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of any unit suffering a Casualty Occurrence, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Vendee; provided, however, that no event of default shall have occurred and at such time be continuing hereunder and the Vendee shall have made payment of the Casualty Value of such unit to the Vendor. All insurance proceeds received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

## ARTICLE 9

### REPORTS AND INSPECTIONS

On or before March 31 in each year, commencing with the year 1981, the Vendee shall cause to be furnished to the

Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Vendee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

#### ARTICLE 10

##### MARKING OF EQUIPMENT

The Vendee will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor which previously shall have been filed with the Vendor and filed by or on behalf of the Vendee in all public offices where this Agreement shall have been filed. Except as aforesaid, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

#### ARTICLE 11

##### COMPLIANCE WITH APPLICABLE LAWS

During the term of this Agreement, the Vendee will comply and will cause every lessee or user of the Equipment to comply in all respects (including without limitation the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in § 10 of the Lease), and in the event that any Applicable Law requires any alteration, replacement or addition of or to any part on any unit of the Equipment, the Vendee will or will cause such lessee or user to conform therewith at no expense to the Vendor; provided, however, that the Vendee or such lessee or user may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

## ARTICLE 12

## POSSESSION AND USE

12.1. Possession and Use of Equipment by Vendee.

So long as an event of default shall not have occurred and be continuing under this Agreement, the Vendee shall be entitled to the possession and use of the Equipment from and after delivery of the Equipment by NAC to the Vendee, but only upon and subject to all the terms and conditions of this Agreement.

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights and shall be subject to the remedies of the Vendor under this Agreement. The Lease shall not be amended in any material respect or terminated (except in accordance with its terms) without the prior written consent of the Vendor, which shall not be unreasonably withheld.

## ARTICLE 13

## PROHIBITION AGAINST LIENS

13.1. Vendee To Discharge Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to any unit of Equipment equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. This covenant will not be deemed breached by reason of liens for taxes,

assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

13.3. Article 13 Subject to Article 23 Except in Certain Instances. The obligations of the Vendee under this Article 13 are subject to the limitations contained in Article 23 hereof; provided, however, that the Vendee will pay or discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Vendee or its successors or assigns not arising out of the transactions contemplated hereby or in other documents mentioned herein (but including net income taxes arising out of the receipt of rentals and other payments under the Lease and any other proceeds from the Equipment) which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or the Vendee's interest in the Lease and the payments to be made thereunder, but the Vendee shall not be required to pay or discharge any such tax, claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement.

#### ARTICLE 14

##### INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Vendee shall pay and shall protect, indemnify and hold the Vendor and its successors, assigns, agents and servants (the "Indemnified Persons") harmless from and against any and all Indemnified Matters (as defined in § 12 of the Lease). The Vendee shall be obligated under this Article 14, whether or not any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Vendee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Vendee may and, upon such Indemnified Person's request, will, at the Vendee's expense,

resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Vendee and approved by such Indemnified Person (such approval not to be unreasonably withheld) and, in the event of any failure by the Vendee to do so, the Vendee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Vendee is required to make any payment under this Article 14, the Vendee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States of America or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Vendee agree to give each other written notice of any claim or liability hereby indemnified against promptly upon obtaining knowledge thereof. Upon the payment in full of any indemnities as contained in this Article 14 by the Vendee, and provided that no event of default described in Section 16.1 hereof (or other event which with notice or lapse of time or both would constitute such an event of default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the Indemnified Matter. Any payments received by such Indemnified Person from any person (other than the Vendee) as a result of any Indemnified Matter shall be paid over to the Vendee to the extent necessary to reimburse the Vendee for indemnification payments previously made in respect of such Indemnified Matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Vendee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. Vendee Not Released if Equipment Damaged or Lost. The Vendee will bear the responsibility for and risk of any damage to or the destruction or loss of any unit of Equipment and shall not be released from its obligations hereunder in any such event.

14.4. Warranties of Builder; Patent Indemnities. The agreement of the parties relating to the Builder's warranties of material and workmanship and to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

14.5. Warranty Disclaimer by NAC. NAC DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE EQUIPMENT OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE EQUIPMENT DELIVERED TO THE VENDEE HEREUNDER, AND NAC DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF SUCH UNITS FOR ANY PARTICULAR PURPOSE, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT (EXCEPT AS PROVIDED IN ARTICLE 2 OR THIS ARTICLE 14), EITHER UPON DELIVERY THEREOF TO THE VENDEE OR OTHERWISE.

## ARTICLE 15

### ASSIGNMENTS

15.1. Assignment by Vendee. Without the consent of the Vendor, the Vendee will not transfer the right to possession of any unit of Equipment (except to the Lessee pursuant to the Lease) or sell, assign, transfer or otherwise dispose of its rights under this Agreement, except that the rights of the Vendee hereunder shall be assignable to (a) any Affiliate of the Vendee (without relieving the Vendee of its obligations hereunder) or to any bank, trust company, financing company or other financial institution having a combined capital and surplus of at least \$50,000,000 or (b) any other person, provided that the Vendee shall remain primarily liable for its obligations hereunder and shall, at the time of such assignment, agree in writing in a manner reasonably satisfactory to the Vendor and any assignee hereof to indemnify the Vendor and any assignee hereof and to hold the Vendor and any assignee hereof harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against the Vendor or any assignee hereof resulting from, arising out of or in

connection with such assignment. For the purpose of this Article 15, "Affiliate" shall mean any corporation which directly or indirectly controls or is controlled by or is under common control with the Vendee, and "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a corporation, whether through the ownership of voting securities or by contract or otherwise.

15.2. Assignment by Vendor. All but not less than all of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to or relieve the Builder or NAC from any of the obligations of the Builder to construct and deliver the Equipment to NAC or of NAC to deliver the Equipment to the Vendee in accordance herewith or to respond to their respective warranties and indemnities herein or relieve the Vendee of its obligations to NAC pursuant to Article 4 hereof or NAC's obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. Notice of Assignment by Vendor. Upon any such assignment by the Vendor, either the assignor or the assignee shall give written notice to the Vendee, together with a copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall be made only to the assignee in such manner as it may direct.

15.4. No Setoff Against CSA Indebtedness upon Assignment. The Vendee recognizes that this Agreement will be assigned to the Agent as provided in the CSA Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the assignee to the

entire unpaid CSA Indebtedness in respect of the Vendee Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by the Vendee arising out of any breach of any obligation of NAC or the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or with respect to any indemnity herein contained or any other indebtedness or liability at any time owing to the Vendee by any person. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against NAC, the Builder or such other person, as the case may be.

## ARTICLE 16

### DEFAULTS

16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness.  
In the event that any one or more of the following events of default shall occur and be continuing:

(a) the Vendee shall fail to pay or cause to be paid in full (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Vendee) any sum payable by the Vendee pursuant to Article 4 hereof when payment thereof shall be due hereunder and such default shall continue for 5 days plus 3 business days after the date such payment is due and payable or any sum payable by the Vendee pursuant to Article 7 hereof when payment thereof shall be due hereunder and such default shall continue for 5 days after the date such payment is due and payable;

(b) the Vendee, the Lessee or the Guarantor shall, for more than 30 days after the Vendor shall have given notice in writing demanding performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Vendee) or of any other agreement contemplated by the Participation Agreement made expressly for the benefit of the Vendor, on its part to be kept and performed, or to make provision satisfactory to the Vendor for such compliance;



(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Vendee, the Lessee or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee under this Agreement or the Lessee and the Guarantor under the Lease and the Consent shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed pursuant to a court order or decree by a trustee or trustees appointed for the Vendee, the Lessee or the Guarantor, as the case may be (whether or not subject to ratification), in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees;

(d) any other proceeding shall be commenced by or against the Vendee, the Lessee or the Guarantor for any relief which includes or might result in any modification of the obligations of the Vendee hereunder or the Lessee or the Guarantor under the Lease or the Consent under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced pursuant to a court order or decree by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee, the Lessee or the Guarantor, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers;

(e) an Event of Default under § 13.1(A)(1) of the Lease shall continue for more than 2 consecutive

monthly Payment Dates or shall have occurred on more than 4 Payment Dates during the term of the Lease, whether or not an event of default under Section 16.1(a) hereof shall have occurred; or

(f) an Event of Default under any Section other than § 13.1(A)(1) of the Lease shall have occurred;

then at any time after the occurrence of such an event of default and so long as the same shall be continuing, the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the term of the Lease immediately upon such notice to terminate; provided, however, that such termination shall not be in derogation of or impair the rights of the Vendee or the Agent (under the assignment thereof), as the case may be, to enforce compliance by the Lessee or the Guarantor with any of its respective covenants and agreements under the Lease or to enforce any of its rights and remedies under § 13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Vendee or the Agent (under the assignment thereof), as the case may be, to sue for and recover damages provided for in § 13 of the Lease upon the occurrence of an event of default under the Lease, and/or (ii) declare (a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable; provided, however, that the Vendor shall not exercise its rights pursuant to this clause (ii) unless it shall exercise its right to terminate the Lease pursuant to the preceding clause (i) to the extent the Lease is then terminable by the Vendor. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee wherever situated, subject to the provisions of Articles 4 and 23 hereof. The Vendee shall promptly notify the Vendor of any event of which it has knowledge which constituted, constitutes or with notice or lapse of time or both would constitute an event of default under this Agreement. For this purpose, knowledge of the Vendee shall mean actual knowledge by a responsible employee or officer of its Specialized Leasing Department. A copy of any notice given to the Vendee pursuant to this Section 16.1 shall also be

given to the Lessee, but the failure to give any such notice shall not relieve the Lessee of any of its obligations under this Agreement or the Lease.

In the case of an event of default under subparagraph (c) or (d) above, the Vendee shall have the option for a period of 30 days after the commencement of such event of default to prepay, without premium or penalty, all, but not less than all, the outstanding CSA Indebtedness plus interest accrued to the date of such payment; it being understood, however, that unless and until the Vendee has unconditionally agreed with the Vendor by written notice to the Vendor to exercise such option, the Vendor may exercise its rights and remedies upon the occurrence of an event of default under this Agreement.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this Section, no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

## ARTICLE 17

### REMEDIES

17.1. Vendor May Take Possession of Equipment. At any time during the continuance of a Declaration of Default and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, the Vendor may take or cause to be taken by its agent or agents immediate possession of the Equipment or one or more of the units thereof without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available

trackage and other facilities or means of the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. If the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) place such units upon such storage tracks as the Vendor reasonably may designate;

(b) cause such units to be stored on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the same to be transported to any reasonable place, as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and permit the inspection thereof by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence to the agreement between the parties, and the Vendee acknowledges that upon application to any court of equity having competent jurisdiction the Vendor shall be entitled to a decree requiring specific performance thereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of Equipment in any commercially reasonable manner.

17.3. Vendor May Dispose of or Retain Equipment. At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as provided in Section 17.1 hereof) may, upon the consent of the Vendee, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the

Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment, the Vendee consents thereto and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment and the Vendee shall have no further rights or obligations hereunder; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided further, that if the Lessee or any other persons notified under the terms of this Section object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Vendee's Right of Redemption. At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment or one or more of the units thereof free from any and all claims of the Vendee, the Lessee, the Guarantor or any other party claiming from, through or under the Vendee, the Lessee or the Guarantor, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with inter-

est thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fee and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited against the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Vendee, the Lessee or the Guarantor may bid for and become the purchaser of any unit of Equipment so offered for sale. The Vendee and the Lessee shall be given written notice of such sale not less than 10 business days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee, the Guarantor and the Vendee to purchase or provide a purchaser within 10 business days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee, the Lessee or the Guarantor (except to the extent of surplus money received as provided in Section 17.7 hereof), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. Effect of Remedies and Powers and Exercise Thereof. Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power

and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. Deficiency or Surplus. If there shall remain any amount due to the Vendor under the provisions of this Agreement after applying all sums of money realized by it under the remedies herein provided, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If there shall remain a surplus in the possession of the Vendor after applying as aforesaid all sums realized by the Vendor, such surplus shall be paid to the Vendee.

17.8. Expenses. The Vendee will pay all reasonable fees, costs and expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

## ARTICLE 18

## APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall be ineffective as to such jurisdiction without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the parties hereto to the full extent permitted by law, it being the intention of the parties hereto that this Agreement (except such portion as relates to the sale of the Equipment by the Builder to NAC) shall be deemed to be a conditional sale and enforced as such.

18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, including notice of intention to take possession of or to sell or lease any one or more units of Equipment, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

## ARTICLE 19

## FILING

The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and the Vendee will from time to time perform any other act and will execute, deliver and file any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the reasonable satisfaction of the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing satisfactory to the Vendor.



## ARTICLE 20

## REPRESENTATIONS AND WARRANTIES OF BUILDER AND NAC

20.1. Binding Agreement. Each of NAC and the Builder hereby represents and warrants to each other and to the Vendee and its successors and assigns that this Agreement has been duly authorized by it and lawfully executed and delivered by it for a valid consideration and that, assuming due authorization, execution and delivery by the other parties hereto, this Agreement is a legal, valid and binding agreement, enforceable against the Builder or NAC in accordance with its terms.

20.2. Good Title to NAC. The Builder represents and warrants to NAC and the Vendee that, at the time of delivery and acceptance of each unit of Equipment under this Agreement, the Builder had and pursuant to this Agreement will transfer to NAC good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the Lessee under the Lease.

20.3. Good Title to Vendee. NAC represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of Equipment under this Agreement, NAC had and pursuant to this Agreement the Vendor will transfer to the Vendee good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the Lessee under the Lease.

20.4. ERISA. Each of NAC and the Builder represents to each other and to the Vendee that it is not entering into this Agreement or into any other transaction contemplated by the Participation Agreement directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, insofar as is known to it, any party hereto or to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

## ARTICLE 21

## HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

21.1. Headings. All article and section headings are provided for convenience only and shall not affect any interpretation of this Agreement.

21.2. Effect and Modification of Agreement. Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

## ARTICLE 22

## NOTICES

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first-class mail, postage prepaid, at its chief place of business at the following specified addresses:

(a) to the Vendee, at 55 Water Street (Suite 1822), New York, New York 10087, attention of Manager, Specialized Leasing Group, with a copy to Richard H. Gilden, Esq., Messrs. Rosenman Colin Freund Lewis & Cohen, 575 Madison Avenue, New York, New York 10022;

(b) to the Builder, at the address specified in Item 1 of Annex A hereto;

(c) to NAC, at 222 South Riverside Plaza, Chicago, Illinois 60606, attention of Vice-President-Law;

(d) to any assignee of the Vendor or of the Vendee, at such address as may have been furnished in writing to the Vendee or the Vendor, as the case may be, by such assignee,

or at such other address as may have been furnished in writing to the other parties to this Agreement.

## ARTICLE 23

### IMMUNITIES; SATISFACTION OF UNDERTAKINGS

23.1. No Recourse Against Certain Persons. No recourse shall be had in respect of any obligation due under this Agreement or referred to herein against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

23.2. Satisfaction of Certain Covenants. The obligations of the Vendee hereunder, except as set forth in Sections 4.3(a) and 13.3 hereof, shall be deemed satisfied in full in all respects and be of no further force or effect insofar as they involve personal liability for money or performance or otherwise of the Vendee, other than out of "income and proceeds from the Equipment", by the Lessee's execution and delivery of the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations hereunder or under the Lease; but if the same shall not be performed, they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor; provided, however, that the Vendor shall be deemed to have consented to any agreement in writing between the Lessee and the Vendee increasing or decreasing the rentals and casualty values payable pursuant to §§ 3, 7 and 30 of the Lease so long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Vendee hereunder.

## ARTICLE 24

## GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, such additional rights, if any, arising out of the filing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof may be filed or in which any unit of Equipment shall be located, and such rights, if any, arising out of the marking of Equipment.

## ARTICLE 25

## EXECUTION

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument. Although for convenience this Agreement is dated as of the date first set forth above, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first set forth above.

PULLMAN INCORPORATED  
(Pullman Standard Division),

[Corporate Seal]

by

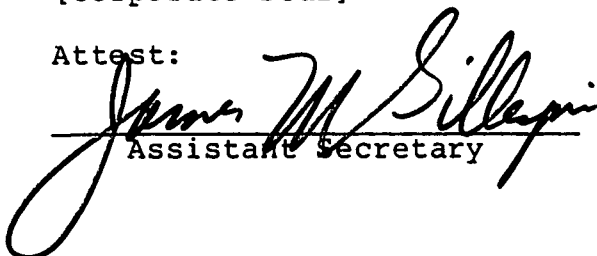
  
~~Vice President - Freight Unit~~

Attest:

  
Assistant Secretary

[Corporate Seal]

Attest:

  
Assistant Secretary

NORTH AMERICAN CAR CORPORATION,

by

  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

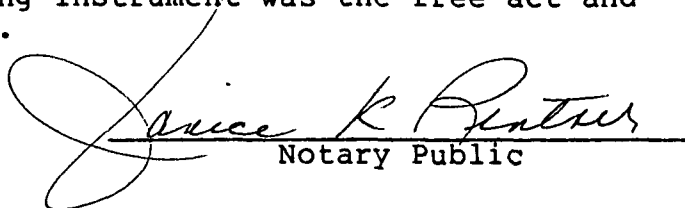
CHEMICAL BANK,

by

\_\_\_\_\_  
Vice President

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this <sup>25<sup>th</sup></sup> day of June 1980, before me personally appeared E. J. Christ, to me personally known, who, being by me duly sworn, says that he is a Vice President ~~Freight Unit~~ of PULLMAN INCORPORATED (Pullman Standard Division), a Delaware corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

  
Notary Public

[Notarial Seal]

My Commission expires

MY COMMISSION EXPIRES  
August 7, 1983

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK. )

On this 25<sup>th</sup> day of June 1980, before me personally appeared N. R. Platt, to me personally known, who, being by me duly sworn, says that he is a Vice President of NORTH AMERICAN CAR CORPORATION, a Delaware corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Hebra A. Kelly  
Notary Public

[Notarial Seal]

My Commission expires My Commission Expires Feb. 23, 1983

STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK, )

On this                    day of                    1980, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, a New York banking corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

## SCHEDULE I

Allocation Schedule of Each \$1,000,000 of CSA  
 Indebtedness Payable in (i) One Interim Payment of  
 Interest Only on the Interim Payment Date and (ii) 180 Monthly  
 Installments of Principal and Interest  
 Commencing One Month after the Interim Payment Date

<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
	*	*	-0-	\$1,000,000.00
1	\$11,209.48	\$8,958.33	\$ 2,251.15	997,748.85
2	11,209.48	8,938.17	2,271.31	995,477.54
3	11,209.48	8,917.82	2,291.66	993,185.88
4	11,209.48	8,897.29	2,312.19	990,873.70
5	11,209.48	8,876.58	2,332.90	988,540.80
6	11,209.48	8,855.68	2,353.80	986,187.00
7	11,209.48	8,834.59	2,374.89	983,812.11
8	11,209.48	8,813.32	2,396.16	981,415.95
9	11,209.48	8,791.85	2,417.63	978,998.32
10	11,209.48	8,770.19	2,439.29	976,559.03
11	11,209.48	8,748.34	2,461.14	974,097.89
12	11,209.48	8,726.29	2,483.19	971,614.70
13	11,209.48	8,704.05	2,505.43	969,109.27
14	11,209.48	8,681.60	2,527.88	966,581.39
15	11,209.48	8,658.96	2,550.52	964,030.87
16	11,209.48	8,636.11	2,573.37	961,457.50
17	11,209.48	8,613.06	2,596.42	958,861.08
18	11,209.48	8,589.80	2,619.68	956,241.40
19	11,209.48	8,566.33	2,643.15	953,598.25
20	11,209.48	8,542.65	2,666.83	950,931.42
21	11,209.48	8,518.76	2,690.72	948,240.70
22	11,209.48	8,494.66	2,714.82	945,525.88
23	11,209.48	8,470.34	2,739.14	942,786.74
24	11,209.48	8,445.80	2,763.68	940,023.06
25	11,209.48	8,421.04	2,788.44	937,234.62
26	11,209.48	8,396.06	2,813.42	934,421.20
27	11,209.48	8,370.86	2,838.62	931,582.59
28	11,209.48	8,345.43	2,864.05	928,718.54
29	11,209.48	8,319.77	2,889.71	925,828.83
30	11,209.48	8,293.88	2,915.60	922,913.23
31	11,209.48	8,267.76	2,941.72	919,971.51
32	11,209.48	8,241.41	2,968.07	917,003.44

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\* Interest accrued only.



<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
33	\$11,209.48	\$8,214.82	\$ 2,994.66	\$ 914,008.78
34	11,209.48	8,188.00	3,021.48	910,987.30
35	11,209.48	8,160.93	3,048.55	907,938.76
36	11,209.48	8,133.62	3,075.86	904,862.90
37	11,209.48	8,106.06	3,103.42	901,759.48
38	11,209.48	8,078.26	3,131.22	898,628.26
39	11,209.48	8,050.21	3,159.27	895,468.98
40	11,209.48	8,021.91	3,187.57	892,281.41
41	11,209.48	7,993.35	3,216.13	889,065.28
42	11,209.48	7,964.54	3,244.94	885,820.34
43	11,209.48	7,935.47	3,274.01	882,546.34
44	11,209.48	7,906.14	3,303.34	879,242.99
45	11,209.48	7,876.55	3,332.93	875,910.06
46	11,209.48	7,846.69	3,362.79	872,547.27
47	11,209.48	7,816.57	3,392.91	869,154.37
48	11,209.48	7,786.17	3,423.31	865,731.05
49	11,209.48	7,755.51	3,453.97	862,277.09
50	11,209.48	7,724.57	3,484.91	858,792.18
51	11,209.48	7,693.35	3,516.13	855,276.05
52	11,209.48	7,661.85	3,547.63	851,728.41
53	11,209.48	7,630.07	3,579.41	848,149.01
54	11,209.48	7,598.00	3,611.48	844,537.53
55	11,209.48	7,565.65	3,643.83	840,893.70
56	11,209.48	7,533.01	3,676.47	837,217.23
57	11,209.48	7,500.07	3,709.41	833,507.83
58	11,209.48	7,466.84	3,742.64	829,765.19
59	11,209.48	7,433.31	3,776.17	825,989.02
60	11,209.48	7,399.48	3,810.00	822,179.02
61	11,209.48	7,365.35	3,844.13	818,334.88
62	11,209.48	7,330.92	3,878.56	814,456.32
63	11,209.48	7,296.17	3,913.31	810,543.01
64	11,209.48	7,261.11	3,948.37	806,594.64
65	11,209.48	7,225.74	3,983.74	802,610.90
66	11,209.48	7,190.06	4,019.42	798,591.48
67	11,209.48	7,154.05	4,055.43	794,536.05
68	11,209.48	7,117.72	4,091.76	790,444.29
69	11,209.48	7,081.06	4,128.42	786,315.87
70	11,209.48	7,044.08	4,165.40	782,150.47
71	11,209.48	7,006.76	4,202.72	777,947.75
72	11,209.48	6,969.12	4,240.36	773,707.39
73	11,209.48	6,931.13	4,278.35	769,429.04
74	11,209.48	6,892.80	4,316.68	765,112.36
75	11,209.48	6,854.13	4,355.35	760,757.01

<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
76	\$11,209.48	\$6,815.11	\$ 4,394.37	\$ 756,362.64
77	11,209.48	6,775.75	4,433.73	751,928.91
78	11,209.48	6,736.03	4,473.45	747,455.46
79	11,209.48	6,695.96	4,513.52	742,941.94
80	11,209.48	6,655.52	4,553.96	738,387.98
81	11,209.48	6,614.73	4,594.75	733,793.23
82	11,209.48	6,573.56	4,635.92	729,157.30
83	11,209.48	6,532.03	4,677.45	724,479.85
84	11,209.48	6,490.13	4,719.35	719,760.50
85	11,209.48	6,447.85	4,761.63	714,998.87
86	11,209.48	6,405.20	4,804.28	710,194.59
87	11,209.48	6,362.16	4,847.32	705,347.27
88	11,209.48	6,318.74	4,890.74	700,456.52
89	11,209.48	6,274.92	4,934.56	695,521.96
90	11,209.48	6,230.72	4,978.76	690,543.20
91	11,209.48	6,186.12	5,023.36	685,519.84
92	11,209.48	6,141.12	5,068.36	680,451.48
93	11,209.48	6,095.71	5,113.77	675,337.71
94	11,209.48	6,049.90	5,159.58	670,178.13
95	11,209.48	6,003.68	5,205.80	664,972.34
96	11,209.48	5,957.04	5,252.44	659,719.90
97	11,209.48	5,909.99	5,299.49	654,420.41
98	11,209.48	5,862.52	5,346.96	649,073.45
99	11,209.48	5,814.62	5,394.86	643,678.59
100	11,209.48	5,766.29	5,443.19	638,235.40
101	11,209.48	5,717.53	5,491.95	632,743.45
102	11,209.48	5,668.33	5,541.15	627,202.30
103	11,209.48	5,618.69	5,590.79	621,611.51
104	11,209.48	5,568.60	5,640.88	615,970.62
105	11,209.48	5,518.07	5,691.41	610,279.22
106	11,209.48	5,467.08	5,742.40	604,536.82
107	11,209.48	5,415.64	5,793.84	598,742.98
108	11,209.48	5,363.74	5,845.74	592,897.23
109	11,209.48	5,311.37	5,898.11	586,999.12
110	11,209.48	5,258.53	5,950.95	581,048.17
111	11,209.48	5,205.22	6,004.26	575,043.91
112	11,209.48	5,151.44	6,058.04	568,985.87
113	11,209.48	5,097.17	6,112.31	562,873.56
114	11,209.48	5,042.41	6,167.07	556,706.49
115	11,209.48	4,987.16	6,222.32	550,484.17
116	11,209.48	4,931.42	6,278.06	544,206.11
117	11,209.48	4,875.18	6,334.30	537,871.81
118	11,209.48	4,818.43	6,391.05	531,480.77
119	11,209.48	4,761.18	6,448.30	525,032.47

<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
120	\$11,209.48	\$4,703.42	\$ 6,506.06	\$ 518,526.41
121	11,209.48	4,645.13	6,564.35	511,962.06
122	11,209.48	4,586.33	6,623.15	505,338.91
123	11,209.48	4,526.99	6,682.49	498,656.42
124	11,209.48	4,467.13	6,742.35	491,914.07
125	11,209.48	4,406.73	6,802.75	485,111.32
126	11,209.48	4,345.79	6,863.69	478,247.63
127	11,209.48	4,284.30	6,925.18	471,322.45
128	11,209.48	4,222.26	6,987.22	464,335.23
129	11,209.48	4,159.67	7,049.81	457,285.42
130	11,209.48	4,096.52	7,112.96	450,172.46
131	11,209.48	4,032.79	7,176.69	442,995.77
132	11,209.48	3,968.50	7,240.98	435,754.79
133	11,209.48	3,903.64	7,305.84	428,448.95
134	11,209.48	3,838.19	7,371.29	421,077.66
135	11,209.48	3,772.15	7,437.33	413,640.33
136	11,209.48	3,705.53	7,503.95	406,136.38
137	11,209.48	3,638.31	7,571.17	398,565.21
138	11,209.48	3,570.48	7,639.00	390,926.21
139	11,209.48	3,502.05	7,707.43	383,218.78
140	11,209.48	3,433.00	7,776.48	375,442.30
141	11,209.48	3,363.34	7,846.14	367,596.16
142	11,209.48	3,293.05	7,916.43	359,679.73
143	11,209.48	3,222.13	7,987.35	351,692.38
144	11,209.48	3,150.58	8,058.90	343,633.48
145	11,209.48	3,078.38	8,131.10	335,502.38
146	11,209.48	3,005.54	8,203.94	327,298.44
147	11,209.48	2,932.05	8,277.43	319,021.01
148	11,209.48	2,857.90	8,351.58	310,669.43
149	11,209.48	2,783.08	8,426.40	302,243.03
150	11,209.48	2,707.59	8,501.89	293,741.14
151	11,209.48	2,631.43	8,578.05	285,163.09
152	11,209.48	2,554.59	8,654.89	276,508.20
153	11,209.48	2,477.05	8,732.43	267,775.77
154	11,209.48	2,398.82	8,810.66	258,965.11
155	11,209.48	2,319.90	8,889.58	250,075.53
156	11,209.48	2,240.26	8,969.22	241,106.31
157	11,209.48	2,159.91	9,049.57	232,056.74
158	11,209.48	2,078.84	9,130.64	222,926.10
159	11,209.48	1,997.05	9,212.43	213,713.67
160	11,209.48	1,914.52	9,294.96	204,418.71
161	11,209.48	1,831.25	9,378.23	195,040.48
162	11,209.48	1,747.24	9,462.24	185,578.24

<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
163	\$11,209.48	\$1,662.47	\$ 9,547.01	\$ 176,031.23
164	11,209.48	1,576.95	9,632.53	166,398.70
165	11,209.48	1,490.65	9,718.83	156,679.87
166	11,209.48	1,403.59	9,805.89	146,873.98
167	11,209.48	1,315.75	9,893.73	136,980.25
168	11,209.48	1,227.11	9,982.37	126,997.88
169	11,209.48	1,137.69	10,071.79	116,926.09
170	11,209.48	1,047.46	10,162.02	106,764.07
171	11,209.48	956.43	10,253.05	96,511.02
172	11,209.48	864.58	10,344.90	86,166.12
173	11,209.48	771.90	10,437.58	75,728.54
174	11,209.48	678.40	10,531.08	65,197.46
175	11,209.48	584.06	10,625.42	54,572.04
176	11,209.48	488.87	10,720.61	43,851.43
177	11,209.48	392.84	10,816.64	33,034.79
178	11,209.48	295.94	10,913.54	22,121.25
179	11,209.48	198.17	11,011.31	11,109.94
180	11,209.47	99.53	11,109.94	-0-

Annex A  
to the  
Conditional Sale Agreement

- Item 1: Pullman Incorporated (Pullman Standard Division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.
- Item 2: The Equipment shall be settled for in not more than two Groups of units delivered to and accepted by NAC and the Vendee, unless a greater number shall be agreed to by the parties hereto.
- Item 3: (a) The Builder warrants to NAC, the Vendee, the Lessee and the Guarantor that the Equipment will be built in accordance with the Specifications and requirements set forth in Article 2 of this Agreement and warrants that the Equipment will be free from defects in material (except as to items or specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service. The Builder's obligation under this Item 3 is limited to making good at its factory any part or parts of any unit of Equipment which shall within one year after delivery of such unit of Equipment be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been defective; provided, however, that this warranty will be subject to the following limitations: (i) warranty coverage on running gear and contact points to unit structure is restricted to one year or 25,000 miles, whichever occurs first; and (ii) normal use and service is deemed to require inspection, adjustment, maintenance and compliance with the Builder's written instructions and any applicable Federal, state or local laws or regulations.

THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. The rights of NAC, the Vendee, the Lessee and the Guarantor under the foregoing warranty shall be their sole and exclusive remedy and the Builder will have no liability for lost profits or for indirect, incidental, consequential or commercial losses. This

warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder, except for its obligations and liabilities under Articles 2, 3, 4, 14 and 20 of this Agreement and Item 4 below. The Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees with NAC, the Vendee, the Lessee and the Guarantor that neither the inspections provided for in Article 3 of this Agreement nor any examination nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or a modification by NAC, the Vendee, the Lessee or the Guarantor of any of their rights under this Item 3.

- Item 4: Except in case of designs, processes or combinations specified by the Lessee and not developed by the Builder and articles and materials specified by the Lessee and not manufactured by the Builder, the Builder agrees to indemnify, protect and hold harmless the Lessee, the Guarantor, the Vendee and NAC from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Lessee, the Guarantor, NAC and the Vendee because of the use in or about the construction or operation of any unit of Equipment of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right. The Lessee, as a condition to its being a third-party beneficiary hereof, will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any unit of Equipment of any design, process or combination specified by the Lessee and not developed by the Builder or article or material specified by the Lessee and not manufactured by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder hereby transfers and assigns to the

Lessee every claim, right and cause of action (to the extent legally possible without impairing such claim, right or cause of action) which the Builder has or hereafter shall have against the originator or seller or sellers of any design, process, combination, article, or material specified by the Lessee and used by the Builder in or about the construction or operation of any unit of Equipment on the ground that any such design, process, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Builder further agrees to execute and deliver to the Lessee all and every such further assurances as may be reasonably requested by it more fully to effectuate the assignment and transfer of every such claim, right and cause of action. The Lessee, as a condition to its being a third-party beneficiary hereof, will give notice to the Builder of any claim known to the Lessee on the basis of which liability may be charged against the Builder hereunder.

Item 5: The Maximum Purchase Price referred to in Article 4 of the Agreement is \$16,423,611.

Annex B  
to the  
Conditional Sale Agreement

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100-Tbn 4,750 cubic foot Covered Hopper Cars	L0	1072	Butler, Pa.	300	CAGX 700- CAGX 999	\$47,372	\$14,211,600	June 1980 at Butler, Pa.



ANNEX C  
to the  
Conditional Sale Agreement

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[CS&M Ref. 4876-023]

LEASE OF RAILROAD EQUIPMENT

Dated as of April 1, 1980

Between

MHC, INC.,  
Lessee,

CONAGRA, INC.,  
Guarantor,

and

CHEMICAL BANK,  
Lessor.

[Covering 300 4,750-cubic foot Covered Hopper Cars]

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# LEASE OF RAILROAD EQUIPMENT

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\* This Table of Contents has been provided for convenience only and does not affect any interpretation of this document.

LEASE OF RAILROAD EQUIPMENT dated as of April 1, 1980, between MHC, INC., an Oregon corporation (the "Lessee"), CONAGRA, INC., a Delaware Corporation (the "Guarantor"), and CHEMICAL BANK, a New York banking corporation (the "Lessor").

The Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with PULLMAN INCORPORATED (Pullman Standard Division) (the "Builder") and NORTH AMERICAN CAR CORPORATION ("NAC") wherein the Builder has agreed to manufacture, sell and deliver to NAC, and NAC has agreed to sell conditionally and deliver to the Lessor, the units of railroad equipment described in Appendix A hereto (the "Equipment").

NAC is assigning certain of its interests in the CSA pursuant to an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") to LA SALLE NATIONAL BANK, acting as agent (the "Vendor") for certain investors (the "Investors") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") between the Lessee, the Guarantor, the Vendor, the Lessor, NAC and the Investors.

The Lessee will lease such units of Equipment as are settled for under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided. The Lessor will assign this Lease as security to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment"), and the Lessee and the Guarantor will acknowledge and consent thereto pursuant to the Consent and Agreement substantially in the form attached to the Lease Assignment (the "Consent").

In consideration of the agreements hereinafter set forth, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

#### § 1. NET LEASE

This Lease is a net lease. Each of the Lessee's and the Guarantor's obligations to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, neither the Lessee nor the Guarantor shall be entitled to any abatement of rent or such other amounts, reduction thereof or setoff against

rent or such other amounts, including but not limited to abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee or the Guarantor against the Lessor under this Lease or the CSA or against the Builder, NAC or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate or the respective obligations of the Lessor or the Lessee or the Guarantor be otherwise affected by reason of any defect in or damage to or loss of possession or use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's or the Guarantor's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee or the Guarantor, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee and the Guarantor hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, each of the Lessee and the Guarantor hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee or the Guarantor hereunder shall be final and neither the Lessee nor the Guarantor shall seek to recover all or any part of such payment from the Lessor or the Vendor for any reason whatsoever.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Lessor has appointed the Lessee its agent for inspection and acceptance of the Units under the CSA. Each delivery of a Unit to the Lessor under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is so delivered to the Lessor. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Lessor under the CSA and on behalf of itself hereunder and execute and deliver to

the Lessor a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee, NAC and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

### § 3. RENTALS

3.1. Amount and Date of Payment. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, one interim rental payment on the Interim Payment Date (as defined in the CSA), and 240 consecutive monthly payments payable, in arrears, on the first day of each month, commencing on the first day of the month next succeeding the Interim Payment Date. In respect of each Unit subject to this Lease, (a) the interim rental payment shall be in an amount equal to 0.029372% of the Vendee Purchase Price (as defined in Section 4.1 of the CSA) of such Unit for each day elapsed from and including the Closing Date (as defined in Section 4.2 of the CSA) for such Unit to, but not including, the Interim Payment Date, and (b) the 240 monthly rental payments shall each be in an amount equal to 0.8117% of the Vendee Purchase Price of such Unit.

In addition to the foregoing, the Lessee agrees to pay to the Lessor as additional rental an amount equal to the amount of any deficiency to be paid by the Lessor pursuant to Paragraph 8 of the Participation Agreement, payable on the date or dates payable thereunder.

The Lessor and the Lessee agree that the rentals payable hereunder and the Casualty Value percentages set forth in Appendix B hereto will be adjusted in the event that the interest rate on the CSA Indebtedness determined in accordance with Section 4.5(b) of the CSA is not 10.75% per annum. Such adjustment will be made in such manner as will result, in the Lessor's judgment, in preserving the net after-tax rate of return and the net after-tax cash flow that would have been realized by the Lessor had such interest rate been 10.75% per annum. In such event, the Lessor and the Lessee agree that this Lease will be amended to reflect the changed rental rates and Casualty Values.

Anything in the foregoing provisions of this § 3.1 to the contrary notwithstanding, it is agreed that the aggregate of the rental payable pursuant to this § 3.1 on each rental payment date shall in no event be less than the principal and/or interest payment due on each such date pursuant to Article 4 of the CSA.

3.2. Payment on Nonbusiness Day. If any rental payment date referred to in § 3.1 is not a business day, the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized or obligated to remain closed.

3.3. Instructions To Pay Assignee. Upon execution and delivery of any lease assignment in writing and until the Lessee shall have been otherwise advised in writing, the Lessee shall pay all amounts so assigned in accordance with the instructions of any assignee.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

#### § 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of acceptance thereof pursuant to § 2 hereof and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of the Lessee and the Guarantor hereunder (including but not limited to the obligations under §§ 6, 7, 10, 11, 12 and 17 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee and Guarantor Subject to CSA. All rights and obligations of the Lessee and the Guarantor under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term.

## § 5. IDENTIFICATION MARKS

5.1. Identifying Numbers; Legend; Changes. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Appendix A hereto or, in the case of any Unit not there listed, such identification number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on each side thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and in all public offices where this Lease and the CSA shall have been filed and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed, such filing will protect the Vendor's and the Lessor's interests in such Units and no filing with or giving of notice to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Lessor in such Units.

5.2. Insignia of Lessee. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

## § 6. GENERAL TAX INDEMNIFICATION

Whether or not the transactions contemplated hereby are consummated, the Lessee assumes responsibility for and agrees to pay and agrees to hold harmless and indemnify on a net after-tax basis the Lessor and the Vendor and their successors and assigns (the "Indemnified Persons") against all taxes, additions to tax, assessments, fees, withholdings and other governmental charges (including those asserted or imposed by

any foreign government or subdivision thereof) of any nature whatsoever, including, without limitation, penalties, fines and interest (all such taxes, additions to tax, assessments, fees, withholdings, governmental charges, penalties, fines and interest are called "Taxes"), in any manner imposed on, incurred by or asserted against any Indemnified Person or any Unit in whole or in part on account of or with respect to this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acceptance or rejection of the Units or any portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, transfer of title, operation, maintenance, repair, condition, sale, return or other disposition of the Units or any portion thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for any Taxes imposed on or measured solely by the net income or excess profits of the Lessor or the Vendor, other than Taxes arising out of or imposed with respect to the receipt of indemnification payments pursuant to this Lease. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within ten days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question, subject to the rights of the Lessee to contest any Taxes in accordance with the sixth paragraph of this § 6.

In the event that the Lessor shall become obligated to make any payment to the Builder, NAC or the Vendor or otherwise pursuant to any corresponding provision of the CSA not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in such Units.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in the name of the Lessor and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities, including without limitation reason-



able counsel fees and expenses, incurred in connection therewith as a result of or incident to any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit its compliance with the requirements of taxing jurisdictions.

If any taxing authority shall assert liability for any Taxes or propose an increase in the liability of any Indemnified Person for any such Taxes (such assertion or such proposed increase is called a "Claim"), indemnification for which would be required under this § 6, the Indemnified Person will notify the Lessee in writing within a reasonable time of such Claim. If the Lessee delivers to such Indemnified Person written notice of its desire to contest such Claim within 30 days after receipt of notice from such Indemnified Person, such Claim will be contested in accordance with this paragraph, except to the extent such Claim represents amounts payable to the Vendor under Article 6 of the CSA. The Lessor will permit the Lessee to contest such claims under Article 6 of the CSA in accordance with the rights of the Lessor thereunder. The Indemnified Person shall have the exclusive right to conduct the contest unless such is waived in writing, in which event the contest and all preparations therefor shall be the sole responsibility of the Lessee and, in either case, shall be conducted entirely at its expense. Such Indemnified Person will cooperate with any reasonable request made by the Lessee in connection therewith; provided, however, that such Indemnified Person may in its sole discretion determine in what court or other forum such contest will be conducted and whether such contest will proceed by payment of the Taxes in contemplation of a suit for refund, and such Indemnified Person shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify such Indemnified Person in a manner satisfactory to such Indemnified Person for any liability or loss which such Indemnified Person may incur as a result of contesting the validity of any Claim and shall have agreed to pay such Indemnified Person on demand all costs and expenses which such Indemnified Person may incur in connection with contesting such Claim (including but not limited to fees and disbursements of counsel). If in any such contest the decision is made to pay the Taxes and sue for a refund, the Lessee

will advance to such Indemnified Person on an interest-free basis sufficient funds to pay the Taxes which are to be contested. Upon receipt by any Indemnified Person of a refund of any Taxes paid by the Lessee pursuant to this paragraph, the amount of such refund and any interest paid to such Indemnified Person with respect thereto shall be paid to the Lessee forthwith upon receipt by such Indemnified Person, less the amount of any tax detriment to such Indemnified Person attributable to such refund or interest.

The Lessee covenants and agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder.

In the event that the Lessee becomes liable for the payment or reimbursement of any Taxes pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such Taxes are paid or reimbursed by the Lessee.

## § 7. PAYMENT FOR CASUALTY OCCURRENCES AND INSURANCE

### 7.1. Definitions of Casualty Occurrence; Payments.

In the event that any Unit shall be or become lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to § 14 or 17 hereof or the purchase price of any Unit shall have been refunded by the Builder pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or by any other governmental entity (including any foreign government or subdivision thereof) resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of this Lease or during any renewal term hereof (a "Casualty Occurrence"), the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the next succeeding monthly rental payment date (a "Casualty Payment Date"), the Lessee shall pay to the Lessor a sum equal to the Casualty Value (as defined in § 7.4 hereof) of

any such Unit as of such Casualty Payment Date, plus the rental in respect of such Unit accrued as of such rental payment date; provided, however, that in the event of a Casualty Occurrence during the period any Unit is being returned pursuant to § 14 or 17 hereof, the Lessee shall make such Casualty Value payment and accrued rental payment, if any, to the Lessor on a date 30 days after such Casualty Occurrence. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity (including any foreign government or subdivision thereof) and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the term of this Lease, in which event the Lessee shall promptly and fully notify the Lessor with respect thereto and pay the Lessor, as the Casualty Value therefor, an amount equal to the Casualty Value as of the end of the term of the Lease in which the Casualty Occurrence shall have taken place. Following such payment, provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value plus the Lessee's costs in such proceedings and any balance of such payments shall be the property of the Lessor. In the event such Unit shall be returned by the governmental entity, such Unit shall be returned by the Lessee to the Lessor in the manner provided in § 17 hereof. If the Lessor shall elect to retain such Unit, the Lessee shall be entitled to immediate payment of the amount of the Casualty Value paid by the Lessee plus the Lessee's costs in such proceedings less any condemnation payments received by the Lessee; and if the Lessor shall elect to sell such Unit, the Lessor shall cause such Unit to be sold, and the Lessee shall be entitled to the proceeds of such sale up to the amount of the Casualty Value paid by the Lessee plus the Lessee's costs in such proceedings less any condemnation payments received by the Lessee.

7.2. Requisition by United States Government. In the event of the requisition for use by the United States

Government of any Unit for a period which does not exceed the term of this Lease or for an indefinite period (except where deemed a Casualty Occurrence pursuant to the last paragraph of § 7.1 hereof), all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Lessor or the Lessee from the United States Government for the use of such Unit during the term of this Lease shall be paid over to or retained by the Lessee provided no Event of Default (or other event which with notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

7.3. Lessee Agent for Disposal. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of the Lease at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, and provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

7.4. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Vendee Purchase Price of such Unit as is set forth in Annex B hereto opposite the rental payment date next succeeding the actual date of such Casualty Occurrence or, if there is no such rental payment date, the last rental payment date; but in no event shall such amount be less than the Casualty Value (as defined in Section 7.3 of the CSA) as of such rental payment date.

7.5. No Release. Except as provided in this § 7, the Lessee shall not be released from its obligations hereunder in the event of any Casualty Occurrence and shall bear the risk of any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.6. Insurance To Be Maintained. (1) The Lessee will at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained public liability insurance (providing coverage of not less than \$50,000,000 for one occurrence) with respect to third party personal injury and property damage and property insur-

ance in respect of the Units at the time subject hereto, in either case with a maximum deductible amount of not more than \$250,000. The Lessee will carry such insurance in such amounts, for such risks, with such deductibles and with such insurance companies as are satisfactory to the Lessor and the Vendor and in any event consistent with prudent industry practice and at least comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units. The proceeds of any such insurance shall be payable to the Vendor, the Lessor and the Lessee, as their respective interests may appear, so long as the indebtedness, if any, evidenced by the CSA shall not have been paid in full, and thereafter to the Lessor and, so long as there is no Event of Default hereunder, the Lessee as their respective interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation or material change in coverage to the Lessor and the Vendor, (ii) name the Lessor and the Vendor as additional named insureds and as loss payees as their respective interests may appear, (iii) waive any right to claim any premiums or commissions against the Lessor and the Vendor and (iv) not be a part of an umbrella policy containing any aggregate coverage limitations. In the event such policies shall contain breach of warranty provisions, such policies shall provide that in respect of the interests of the Lessor and the Vendor in such policies the insurance shall not require contributions from other policies held by the Lessor or the Vendor and shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor and the Vendor, respectively) and shall insure the Lessor and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor or the Vendor, respectively). At least five days prior to the first date of delivery of any Unit pursuant to the CSA, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this § 7, the Lessee shall deliver to the Lessor and the Vendor certificates issued by the insurer(s) for the insurance maintained pursuant to this § 7; provided, however, that if the delivery of any certificate is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the certificate upon receipt thereof.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall,

upon demand from time to time, reimburse the Lessor for the cost thereof on demand together with interest thereon at the rate per annum specified in § 19 hereof.

7.7. Insurance Proceeds and Condemnation Payments.

If the Lessor shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence and provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing and the Lessee shall have made payment of accrued rentals in respect of such Units to the Lessor, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to any Unit theretofore paid by the Lessee and any balance of such proceeds or payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor (directly or from the Vendor) in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired by the Lessee.

§ 8. REPORTS

On or before March 31 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Lessor and the Vendor an accurate statement setting forth (a) as at the preceding December 31 the total number, description and identification numbers of all Units then leased hereunder and covered by the CSA and of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repairs (other than running repairs), and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, (b) in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5.1 hereof have been preserved or replaced and (c) that the Lessee is in compliance under this Lease and has performed or has caused to be performed the required maintenance of the Units and that no event has occurred which with notice or lapse of time or both would constitute an Event of Default. The Lessor and the Vendor shall each have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Vendor may request during the continuance of this Lease.

## § 9. DISCLAIMER OF WARRANTIES

THE LESSOR DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder or NAC under the provisions of Items 3 and 4 of Annex A of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce such claims and rights at the Lessee's sole cost and expense. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor or the Vendor based on any of the foregoing matters.

## § 10. APPLICABLE LAWS

10.1. Compliance. The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation the use, maintenance and operation of each Unit) with all laws of the jurisdictions

in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units (all such laws and rules to such extent are called "Applicable Laws"), and in the event that any Applicable Law requires any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA.

10.2. Reports by Lessor. The Lessee agrees to prepare and deliver to the Lessor and the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor and the Vendor) any and all reports (other than income tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee. No such report shall set forth information which is inconsistent with the ownership of the Units by the Lessor or which implies that this Lease is not a true lease.

## § 11. MAINTENANCE

11.1. Units in Good Operating Order. The Lessee at its own cost and expense will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the Applicable Laws and in the same condition as other similar Equipment owned or leased by the Lessee, which will conform to any conditions set forth in the Builder's and NAC's warranties.

11.2. Additions and Accessions. (1) Except as set forth in §§ 10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the



term of this Lease as are readily removable without causing material damage to the Units (and do not adversely affect the value of the Units), which additions, modifications and improvements shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with § 11.2(3) hereof.

(2) Except as set forth in §§ 10.1 and 11.1 hereof, the Lessee will not make any addition, modification or improvement to any Unit which would not be readily removable without causing material damage to such Unit (other than Unit lining) without the prior written consent of the Lessor.

(3) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, (ii) the cost of which is included in the Vendee Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit in railroad interchange by the Applicable Laws shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except those created by the CSA) shall immediately be vested in the Lessor and the Vendor as their respective interests may appear in the Unit.

## § 12. INDEMNIFICATION

12.1. Indemnified Persons. The Lessee shall pay and shall protect, indemnify and hold the Lessor, the Vendor and their respective successors, assigns, agents and servants (the "Indemnified Persons") harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements or expenses relating thereto, including without limitation attorneys' fees and expenses of any Indemnified Person) in any way relating to or arising or alleged to arise out of this Lease, the CSA or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent and other defects whether or not discoverable by the Indemnified Person or the Lessee; (iii) any claim for patent or trademark infringement; (iv) any claims based on strict

liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner arising out of or alleged to arise out of the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Indemnified Person, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation or alleged violation of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, except to the extent any such violation arises from the gross negligence or wilful misconduct of the Lessor; or (vii) any claim arising out of any of the Lessor's obligations under the Lease Assignment or the Vendor's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement (all such matters are called "Indemnified Matters"), except to the extent such claim arises from the gross negligence or wilful misconduct of the Lessor. The Lessee shall be obligated under this § 12.1, whether or not any Indemnified Person shall also be indemnified with respect to any Indemnified Matter under any other agreement by any other person, and the Indemnified Person may proceed directly against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any indemnification payment under this § 12.1, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States of America or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against and of any other such taxes as determined in the sole discretion of the Indemnified Person),

shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 12 by the Lessee, and provided that no Event of Default (or other event which with notice or lapse of time or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of such Indemnified Matter. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any Indemnified Matter shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made and any costs incurred by the Lessee in defending such Indemnified Person. Nothing in this § 12.1 shall constitute a guarantee by the Lessee of the CSA Indebtedness of the Lessor under the CSA or a guarantee of the residual value of any Unit.

12.2. Indemnification of NAC and Builder. The Lessee further agrees to indemnify, protect and hold harmless NAC and the Builder as third-party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against NAC or the Builder because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by NAC or the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed by NAC or the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to NAC or the Builder of any claim known to the Lessee from which liability may be charged against it hereunder.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

## § 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event is called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in (1) § 3 hereof and such default shall continue for five days or (2) § 7 or 17 hereof and such default shall continue for five days;

(B) the Lessee or the Guarantor shall make or permit any unauthorized assignment or transfer of this Lease or any interest herein or of the right to possession of any Unit;

(C) default shall be made in the observance or performance of any other covenant, condition or agreement on the part of the Lessee or the Guarantor contained herein, in the Participation Agreement or the Consent and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee or the Guarantor herein or in the Participation Agreement or in any certificate or statement furnished to the Lessor pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee and the Guarantor under this Lease and the Consent shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed pursuant to a court order or decree by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as

expenses of administration and obligations incurred by such trustee or trustees; or

(F) any other proceedings shall be commenced by or against the Lessee or the Guarantor for any relief which includes or might result in any modification of the obligations of the Lessee or the Guarantor hereunder under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced pursuant to a court order or decree by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or the Guarantor or for its respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee or the Guarantor of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee and the Guarantor to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee and the Guarantor shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises (insofar as the Lessee or the Guarantor may be lawfully authorized to so permit) where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of

such Units and possess and use the same free from any right of the Lessee or the Guarantor to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period), to recover any damages and expenses, including without limitation reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of this Lease and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion shall specify, (i) the excess of the present value at the time of such termination of the entire unpaid balance of all rentals for each Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Unit during such period (such present value to be computed in each case on the basis of a 6% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated) or, if such Unit is sold, the net proceeds of the sale or (ii) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the net proceeds of the sale of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessee shall, if the Lessor shall so elect, pay the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale in lieu of paying any amounts pursuant to the preceding clause (ii) with respect to such Unit.

13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Lessor shall not

be deemed exclusive but shall be cumulative and may be exercised concurrently or consecutively and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee and the Guarantor hereby waive any mandatory requirements of law now or hereafter in effect which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee and the Guarantor hereby waive any and all existing or future claims to any offset against the rental payments due hereunder and agree to make such payments regardless of any offset or claim which may be asserted by the Lessee or the Guarantor or on behalf of either.

13.3. Failure To Exercise Rights Is Not Waiver. The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. Notice of Event of Default. The Lessee and the Guarantor agree to furnish the Lessor and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which after notice or lapse of time or both would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. A "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee or the Guarantor contained in this Lease, any corporate officer of the Lessee or the Guarantor who in the normal performance of such officer's operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

#### § 14. RETURN OF UNITS UPON DEFAULT

14.1. Return of Units. If this Lease shall terminate pursuant to § 13 hereof or Article 16 of the CSA, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 11 and shall

have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 11, is owned by the Lessee or, if Lessee wishes not to remove the same and if the Lessor consents thereto, the same will remain affixed to such Unit and title thereto will immediately vest in the Lessor at no cost or expense to the Lessor. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall, at its own cost, expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon such storage tracks as the Lessor reasonably may designate;

(b) cause such Units to be stored on such tracks at the risk of the Lessee without charge to the Lessor for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) cause the same to be transported to any reasonable place as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

14.2. Lessor Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 14, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the



Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be in possession of such Unit at the time.

§ 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Lessor upon prior written consent of the Vendor, except that without such consent the rights of the Lessor hereunder shall be assignable to any Affiliate of the Lessor (without relieving the Lessor of its obligations hereunder) or to any bank, trust company, financing company or other financial institution having a combined capital and surplus of at least \$50,000,000 and except that the rights of the Lessor hereunder shall be assignable to any other party so long as the Lessor shall remain primarily liable for its obligations hereunder and shall, at the time of such assignment, agree in writing in a manner reasonably satisfactory to the Vendor, the Lessee, the Guarantor and any assignee hereof to indemnify such parties and to hold such parties harmless from and against, any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against such parties resulting from, arising out of or in connection with such assignment. For the purpose of this § 15, "Affiliate" shall mean any corporation which directly or indirectly controls, is controlled by or is under common control with, the party in question, and "control" as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use, Assign and Sublease Units. So long as no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) exists hereunder, the Lessee is complying with the provisions of the Consent and the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment:

(a) The Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA. The Lessee shall not assign or transfer its leasehold interest under this Lease in any Units without

the prior written consent of the Lessor and the Vendor, except as provided in subsection (b) of this § 15.2; and the Lessee shall not part with the possession or control of any Unit or allow any Unit to pass out of its possession or control without the prior written consent of the Lessor and the Vendor, except as provided in said subsection (b). The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which if unpaid might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(b) The Lessee shall be entitled to the possession and use of the Units by it or any Affiliate upon lines of railroad owned or operated by it or any such Affiliate or upon lines of railroad over which the Lessee or any such Affiliate has trackage or other operating rights or over which any of their railroad equipment is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements. The Lessee may sublease the Units without the consent of the Lessor, but only upon and subject to all the terms and conditions of this Lease and the CSA, to any financially responsible entity for a period of up to two years; provided, however, that (i) a copy of each such sublease shall be furnished to the Lessor prior to its effective date, (ii) the Lessee and the Guarantor shall remain primarily liable for all payments due and obligations to be fulfilled hereunder and (iii) each such sublease shall contain words to the following effect:

"The rights of the sublessee under this sublease are subordinate and junior to the rights and remedies of Chemical Bank (the "Lessor") under a Lease of Railroad Equipment (the "Lease") dated as of April 1, 1980, between MHC, Inc., ConAgra, Inc., and the Lessor and to the rights of La Salle National Bank under the Conditional Sale Agreement referred to in the Lease";

provided further, however, that the Lessee shall not sublease or permit the use of any Unit predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee sublease to or permit the use of

the Units by any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. The Lessee may sublease the Units for a longer period of time with the consent of the Lessor, which consent shall not be unreasonably withheld. The Lessee may receive and retain compensation for the use of any of the Units from railroads or other entities so using such Units.

15.3 Transfers by Lessee Through Merger, Acquisition or Consolidation. Nothing in this § 15 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

## § 16. RENEWAL OPTION

16.1. Renewal Option. The parties hereto contemplate that at the end of the original term of this Lease, the Lessor will hold the Units for re-lease. Prior to the delivery of any Unit pursuant to § 2 hereof, the Lessor will enter into an agreement (the "Option Agreement") with Tiger Financial Services, Inc. ("TFS"), pursuant to which the Lessor will grant to TFS the option to lease all but not less than all of the Units then subject to this Lease for one five-year term commencing at the end of the original term of this Lease on such terms as are set forth in the Option Agreement. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, if TFS shall fail to exercise its option to lease the Units at the end of the original term of this Lease, the Lessee may, by written notice delivered to the Lessor not less than 180 days nor more than 270 days prior to the end of the original term of this Lease, elect to extend such original term of this Lease in respect of all but not less than all the Units then covered by this Lease for one five-year term or such other time acceptable to both the Lessee and Lessor commencing on the scheduled expiration of such original term of this Lease, at Fair Market Rental (as defined in § 16.2 hereof) payable, in arrears, in monthly payments on the day such rentals were

payable for the Units in each year of such original term. In the event of any such renewal, the Casualty Value payable in respect of a Casualty Occurrence involving any Unit shall be as set forth in Appendix B hereto.

16.2. Determination of Fair Market Rental.

(1) Fair Market Rental shall be determined for the extended term of this Lease on the basis of and shall be equal in amount to the rental which would be obtained in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental.

(2) If, after 50 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, either party to such determination may give written notice to the other requesting determination of such value by an appraisal procedure and the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the

American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof. The expenses of the appraisal procedure shall be borne by the Lessee.

#### § 17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, and in any event not later than 90 days thereafter, the Lessee will, at its own cost and expense, deliver possession of such Unit to the Lessor upon such storage tracks as the Lessor may reasonably designate or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months from the date of delivery of the last such Unit and transport the same upon disposition of the Units, at any time within such three-month period, to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to or the death of any person exercising the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards of the Applicable Laws then in effect and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession or, if Lessee wishes not to remove the same and if the Lessor consents thereto, the same will remain affixed to such Unit and title thereto will immediately vest in the Lessor at no cost or expense to the Lessor. During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. The assembling, delivery, storage and trans-

porting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. If any Unit is not so delivered in the condition required to be delivered under this § 17 within 30 days after the expiration of the original or any extended term of this Lease, the Lessee shall pay to the Lessor for each day thereafter until such Unit is so delivered an additional amount equal to the higher of the daily interchange rate for that interchange or 0.022239% of the Vendee Purchase Price of such Unit per day.

#### § 18. FILING

The Lessee, at its own expense, will cause this Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will undertake the filing required of the Lessor under the CSA. The Lessee in addition will from time to time perform any other act and will execute, deliver and file (and will refile whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of their respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease, the CSA, the CSA Assignment and the Lease Assignment shall be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery and acceptance hereunder of any Unit.

#### § 19. INTEREST ON OVERDUE AMOUNTS

The Lessee shall promptly pay an amount equal to interest at the higher of 11.75% per annum or 2% above the prime rate of Chemical Bank from time to time in effect (the "Penalty Rate") on any overdue rentals or other amounts due under this Lease for the period of time during which they are overdue, or such lesser amount as may be legally enforceable.

## § 20. LESSOR'S RIGHT TO PERFORM FOR LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the Penalty Rate shall be payable by the Lessee upon demand, except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder.

## § 21. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessee or the Guarantor, at the offices of the Guarantor at 200 Kiewit Plaza, Omaha, Nebraska 68131, attention of Vice President of Transportation, with a copy to the Corporate Secretary at the same address;

(b) if to the Lessor, at 55 Water Street (Suite 1822), New York, New York 10087, attention of Manager, Specialized Leasing Group, with a copy to Richard H. Gilden, Esq., Messrs. Rosenman Colin Freund Lewis & Cohen, 575 Madison Avenue, New York, N. Y. 10022;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at 135 South LaSalle Street, Chicago, Illinois 60690, attention of Corporate Trust Department.

## § 22. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability

in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### § 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement and the Consent, this Lease exclusively and completely states the rights of the Lessor, the Lessee and the Guarantor with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor, the Lessee and the Guarantor.

#### § 24. THIRD-PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Vendor, the Investors, NAC, the Builder and the permitted successors and assigns of such parties) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

#### § 25. EXECUTION

This Lease may be executed in several counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original. Although for convenience this Lease is dated as of the date first set forth above, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto.

#### § 26. GOVERNING LAW

This Lease shall be governed by and construed in accordance with the laws of the State of Nebraska, except that the rights and obligations of the parties under § 30 hereof shall be governed by and construed in accordance with the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.



## § 27. IMMUNITIES; NO RECOURSE

No recourse shall be had in respect of any obligation due under this Lease or referred to herein against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

## § 28. AGREEMENTS FOR BENEFIT OF LESSOR'S ASSIGNS

All rights of the Lessor hereunder (including but not limited to its rights under §§ 6, 7, 9, 12, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the Vendor).

## § 29. TERM LESSOR

Whenever the term Lessor is used in this Lease it shall apply and refer to the Lessor and any assignee of the Lessor including, so long as any CSA Indebtedness under the CSA or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Vendor.

## § 30. TAXES

30.1. Tax Assumptions. It is the intent of the Lessor and Lessee that this Lease will be recognized as a lease for all Federal, state, city and local income taxes or franchise taxes and that this Lease does not convey to the Lessee any right, title or interest in the Units except as lessee and that for United States income tax purposes (and to the extent applicable for state and local tax purposes) the Lessor will be treated as the beneficial owner of the Units purchased by it and shall be entitled to such deductions and other benefits (other than the investment tax credit attributable to the Equipment) as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), to an owner of new property including (without limitation) (a) the depreciation deduction with respect to the Units employing a

useful life of 12 years pursuant to the Asset Depreciation Range, Asset Guideline Class 00.25 based on an amount at least equal to the Vendee Purchase Price of the Units to the Lessor employing the double-declining-balance method, changing when most beneficial to the Lessor to the sum-of-the-years-digits method, and a salvage value of zero (the "Depreciation Deduction") and (b) deductions with respect to interest payable in connection with the CSA Indebtedness incurred under the CSA pursuant to Section 163 of the Code (the "Interest Deduction"). Nothing herein shall preclude the Lessor from claiming any deductions or other benefits (other than the investment tax credit attributable to the Equipment) as provided in the Code in a manner other than as set forth in this § 30.1; provided, however, that the Lessee's obligations under this section shall in all cases be based solely on the assumptions with respect to the Depreciation Deduction and Interest Deduction set forth in this § 30.1.

30.2. Lessee's Tax Agreements and Representations.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Lessor over the amount specified to be payable under this Lease on the dates due hereunder, except as specifically provided in this Lease, and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor such records as will enable the Lessor to determine the extent to which it is entitled to the benefit of the Depreciation Deduction with respect to the Units.

The Lessee represents, covenants and warrants that (i) at the time the Lessor becomes the owner for tax purposes of any Units, such Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 167(c)(2) of the Code from commencing with the Lessor; (ii) the Lessor will be entitled to treat each item of income and deduction arising out of or with respect to the acquisition and lease of the Equipment as derived from sources within the United States of America, (iii) none of the Units will be "used predominantly outside the United States" within the meaning of Section 48(a)(2) of the Code during any calendar year; (iv) the Lessee will

maintain sufficient records to verify the use set forth in the foregoing clauses (i), (ii) and (iii), which records will be retained for at least six years (or such longer period as is reasonably requested by Lessor) and be furnished to the Lessor as soon as possible, but in any event, within 30 days after receipt of a written demand therefor; (v) all of the Units constitute property which qualifies for the Depreciation Deduction, the basis of such Units in the hands of the Vendee will not be less than the Vendee Purchase Price and, during the term of the Lease, all such Units will constitute such property; (vi) the Equipment will be "placed in service" prior to December 31, 1980; and (vii) it is the belief of the Lessee that the independent appraisal delivered to the Lessor in connection with the acquisition of the Equipment is reasonable and the facts and assumptions contained therein are correct.

30.3. Indemnification. (a) If by reason of any act, omission or misrepresentation of the Lessee (including but not limited to the inaccuracy in law or in fact of the representations, warranties and covenants set forth in § 30.2 hereof or the failure of the Lessee to furnish the notice to the Lessor contemplated by § 30.9 hereof or any inaccuracy in such notice) or due to a change in the Code or Regulations occurring on or prior to the date of acceptance of any of the Units under the Lease or a change in the Code or Regulations which shall become effective on or prior to such date, the Lessor shall not be entitled to, or shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of, or shall be required to recapture all or any portion of, the Depreciation Deduction or the Interest Deduction with respect to all or part of any Unit or the Lessor shall not be entitled to treat each item of income and deduction as being derived from sources within the United States (any such loss, disallowance, recapture or treatment called the "Loss"), then, the Lessee shall, beginning with the next succeeding rental payment date after written notice is given to the Lessee by the Lessor of such fact, and on each succeeding rental payment date, pay to the Lessor, pursuant to this section, such amount or amounts as shall, in the reasonable opinion of Lessor, cause the net after-tax rate of return and net after-tax cash flow of the Lessor to at least equal the net after-tax rate of return and net after-tax cash flow that would have been realized by the Lessor if such Loss had not occurred (which it is understood includes giving effect to any Federal, state or local income or franchise taxes required to be paid by Lessor with respect to the receipt of payments made by the Lessee to the Lessor pursuant to the operation of this paragraph) and the Lessee shall forthwith

pay to the Lessor the amount which, when reduced by any increase in the Lessor's tax liability or liabilities resulting from the Lessor's receipt of such amount will equal the amount of any interest, additions to tax and/or penalties which may be assessed by the United States of America or any state or local taxing authority against Lessor attributable to such Loss.

For the calculation of the net after-tax rate of return and net after-tax cash flow to the Lessor, a combined Federal, state and local income tax rate of 59.05% shall be assumed.

(b) Payment shall not be required to be made by the Lessee to the extent that the Lessor shall have suffered such Loss with respect to all or part of such Unit solely as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Unit unless an Event of Default shall have occurred and be continuing hereunder;

(iii) the failure of the Lessor to claim in a timely or proper manner the Depreciation Deduction or the Interest Deduction, unless the Lessor shall have received an opinion of an independent tax counsel reasonably satisfactory to the Lessee to the effect that the Lessor is not entitled to claim the Depreciation Deduction or the Interest Deduction; or

(iv) a change in the Code enacted after the delivery of the Units.

30.4. Change in Law. If the deductions or other benefits to which the Lessor is entitled are increased or decreased by a change in law (other than a change in income tax rates) that is effective prior to the acceptance of the Units by the Lessor which are affected by the change, the rental and Casualty Value hereunder shall be reasonably adjusted by the Lessor so that the net after-tax rate of return and net after-tax cash flow of the Lessor shall not be increased or decreased by reason of such change; provided,

however, that any decreases of the rental or Casualty Value pursuant to this section shall not cause such items to be less than the amounts required to satisfy the CSA Indebtedness and any interest thereon.

30.5. Change in Casualty Values. In the event that increased rental payments are required of the Lessee under this Section, the Casualty Values shall be increased or decreased accordingly for the purposes of this section and, upon the subsequent occurrence of a Casualty Occurrence, the Lessee shall pay under this section any increase or decrease in such Casualty Values, as the case may be, at the same time as the payment of Casualty Value is due to be paid to the Lessor by the Lessee under this Lease as a result of such Casualty Occurrence; provided that in no event shall such Casualty Values be reduced below the amount required to be paid by the Lessor under the CSA in the event of a Casualty Occurrence.

30.6. Tax Claim. If a claim shall be made by the Internal Revenue Service (the "Service"), with respect to the income tax liability of the Lessor attributable to its investment in the Units which, if successful, would lead to increased rental payments by the Lessee hereunder, the Lessor shall give prompt notice of such claim to the Lessee and the Lessor shall take such action to contest such claim as the Lessee shall reasonably request in writing from time to time, provided that within eight days after Lessee's actual receipt of said notice by the Lessor of such proposed or probable adjustment the Lessee shall request that such adjustment be contested; and further provided that an Event of Default shall not be continuing hereunder and the Lessee shall not have failed to make any payments when due under this section. For purposes of this section, "prompt notice" shall mean written notice to the Lessee by the later to occur of (a) 15 days after receipt of such notice by Lessor from the Service or (b) such time as would permit a contest of any claim made by the Service. The Lessor may, in its discretion, forego any administrative appeal with the Service in respect of such claim and may, at its option, either pay the tax claimed and sue for refund in the appropriate United States District Court or in the United States Court of Claims, as it may elect, or contest such claim in the United States Tax Court, considering, however, in good faith such request as the Lessee may make concerning the most appropriate forum in which to proceed; provided, however, that the final decision as to selection of the forum shall be solely that of the

Lessor. If the Lessor pays the tax claimed and sues for refund, payments by the Lessee shall be required so as to maintain the net after-tax rate of return and net after-tax cash flow of the Lessor in the manner and to the extent provided in this section, and, in addition to its obligations under § 30.3 hereof, the Lessee shall forthwith pay to the Lessor the amount which, when reduced by any increase in the Lessor's tax liability or liabilities resulting from the Lessor's receipt of such amount, will equal the amount of any interest, additions to tax and/or penalty assessed against the Lessor with respect to such additional income tax. If the Lessor receives a refund as a result of contesting such claim and the rental under the Lease shall have previously been adjusted or any payment shall previously have been made by the Lessee as a result of the Loss which was the subject of such contest, the Lessor shall forthwith pay to the Lessee any interest on the refund paid by the taxing jurisdiction net of any tax detriment to the Lessor attributable to the receipt of such interest together with the appropriate amount with respect to any interest and/or penalty payments which should not have been assessed against and paid by the Lessee to the Lessor pursuant to the preceding sentence, and the payments of the Lessee with respect to such claim shall, beginning with the next rental payment due after receipt by the Lessor of such refund, be decreased to such amount or amounts as shall, in the reasonable opinion of the Lessor, cause the net after-tax rate of return and net after-tax cash flow of the Lessor over the term of the Lease to at least equal the net after-tax rate of return and net after-tax cash flow that would have been realized by the Lessor if additional income taxes of the Lessor in the amount refunded had not been paid, but in no event shall such rentals be reduced below the amounts required to satisfy the obligations of the Lessor under the CSA. Any such contest shall be at the sole expense of the Lessee and the Lessee agrees to pay to the Lessor on demand any reasonable expense attributable to the contest with respect to the Equipment to be incurred by the Lessor in connection with such contest; and the Lessor shall have no obligation to continue such contest in the event the Lessee fails to make such payment within 10 days after actual receipt of written demand.

30.7. Survival. The agreements to pay any sums which may become payable pursuant to this section shall survive the expiration or other termination of this Lease or the Lessee's interest herein; and the Lessee's obligations hereunder shall be assumed by the assignee if this Lease shall be assigned by the Lessee as provided in Section 15.2 hereof.

30.8. Capital Expenditures. In the event and to the extent that the cost of any improvements and/or additions ("Capital Expenditures") to a Unit made by the Lessee, under and pursuant to the terms hereof or otherwise, is required to be included in the gross income of the Lessor for Federal, state or local income or franchise tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the Lessee shall, beginning with the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice thereof to the Lessor pursuant to § 30.9 hereof after said inclusion in the gross income of the Lessor is required, and on each succeeding rental payment date, pay to the Lessor such amount or amounts as shall, in the reasonable opinion of the Lessor, cause the net after-tax rate of return and net after-tax cash flow of the Lessor to at least equal the net after-tax rate of return and net after-tax cash flow that would have been realized by it if the cost of such Capital Expenditures had not been includible in its gross income; provided that the Lessee shall not be required to make any such payments unless the Lessor agrees in writing to contest such inclusion if requested in writing by the Lessee and as provided in § 30.6 and 30.10 hereof.

For the purposes of this section the cost of Capital Expenditures made by the Lessee shall be deemed to be "required to be included in the gross income of the Lessor for Federal, state or local income tax purposes" if such inclusion is required by any provision of the Code, any applicable regulations enacted or adopted thereunder, any published revenue ruling of the Service which has not been held invalid by a court having appellate jurisdiction over the Federal income tax liability of the Lessor in a decision which has become final, or an assessment or proposed adjustment by the Service with respect to such amounts.

The Lessee agrees to make a payment to the Lessor for any interest, additions to tax and/or penalties resulting from the failure to include the cost of Capital Expenditures in its income tax return, such payment to be made upon demand in an amount, when reduced by any increase in the Lessor's tax liability resulting from Lessor's receipt of such payment, sufficient to restore the Lessor to the same position it would have been in had such interest, additions to tax and/or penalties not been imposed; and such amount shall be determined in the reasonable opinion of the Lessor.

30.9. Notices of Capital Expenditures. The Lessee agrees that, within 30 days after the close of Lessor's

fiscal year in which the Lessee has made Capital Expenditures which are of a type or which the Lessee believes are of a type, or are of a type which the Lessee has been advised by the Lessor may be of a type, required to be included in the gross income of the Lessor for Federal, state or local income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Lessor describing such Capital Expenditures in reasonable detail and specifying the cost thereof with respect to each Unit.

30.10. Contest by Lessor. Notwithstanding any provision in this Section to the contrary, the Lessor shall not be required to contest in a judicial proceeding any disallowance or proposed disallowance by the Service with respect to the Depreciation Deduction or the Interest Deduction of the Lessor or the includibility of the cost of any Capital Expenditure in the gross income of the Lessor unless the Lessor shall have received an opinion from independent tax counsel selected by the Lessor and accepted by the Lessee (which consent shall not be unreasonably withheld) that there is a reasonable basis for contesting such liability, inclusion or other matters.

30.11. Disagreement by Parties. In the event of disagreement between the parties as to the amount of any payment due under this Section, the parties agree to submit the calculation of such payments to one of the eight largest public accounting firms in the United States of America, chosen by mutual agreement, or to Price Waterhouse & Co., and such firm shall perform the calculation which will be binding on both parties. Costs incurred by either party in respect to such submission shall be borne equally by the Lessor and the Lessee.

### § 31. GUARANTEE OF GUARANTOR

In consideration of inducing the Lessor to enter into this Lease, the Guarantor hereby unconditionally, absolutely and irrevocably guarantees the due and punctual performance of all covenants, agreements, terms, conditions and other obligations of the Lessee (including without limitation the payment of money and the specific performance of such obligations) under this Lease, the Consent and the Participation Agreement (the "Documents") and the transactions contemplated hereby and thereby (all such obligations are



called "Obligations"). In the event that the Lessee fails to perform any of the Obligations at the time such Obligation is required to be performed, the Guarantor shall forthwith perform or cause to be performed, such Obligation.

The Guarantor agrees that the Obligations may be extended, altered or modified, in whole or in part, without notice or further assent from it, and that it will remain bound hereunder notwithstanding any extension, alteration or modification of any Obligation.

The Guarantor waives presentation to, demand of payment or performance from and protest to the Lessee of any of the Obligations, and also waives notice of protest for nonpayment or nonperformance of any of the Obligations both monetary and nonmonetary in nature, regardless of any defenses or rights of setoff or counterclaims which the Guarantor or the Lessee may have or assert by reason of any past, present or future claims of the Lessee or the Guarantor against the Lessor under this Lease or the CSA or against the Builder, NAC or the Vendor or otherwise. The obligations of the Guarantor hereunder shall not be affected by (i) the failure of the Lessor or the Vendor to assert any claim or demand or to enforce any right or remedy against the Lessee under the provisions of any Document or any other agreement or otherwise; (ii) any extension or renewal of any thereof; (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Lease or of any other agreement, any assignment of this Lease, the sublease of any Unit or release of any other party; (iv) the failure of the Lessor or the Vendor to exercise any right or remedy against any other guarantor of the Obligations; or (v) the failure of the Guarantor to receive notice of any extension, alteration or modification of any Obligation, any Document or any future agreement relating to the Obligations.

The Guarantor further agrees that this undertaking constitutes a guarantee of payment when due (or performance when required, as the case may be) and not of collection.

The obligations of the Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including without limitation any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any Obligation,

any Document or otherwise. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of the Lessor or the Vendor to assert any claim or demand or to enforce any remedy under this Lease or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, wilful, as the result of actual or alleged force majeure, commercial impracticability or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of the Guarantor or which would otherwise operate as a discharge of the Guarantor as a matter of law.

The Guarantor further agrees that its undertakings hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations which are monetary in nature is rescinded or must otherwise be restored by the Lessor or the Vendor upon the insolvency, winding-up or reorganization of the Lessee or otherwise. In furtherance of the foregoing and not in limitation of any other right which the Lessor or the Vendor may have at law or in equity against the Guarantor by virtue hereof, upon failure of the Lessee to make any payment on any of the Obligations which are monetary in nature when and as the same shall become due as required under any Document, the Guarantor hereby promises to pay or cause to be paid to the Lessor or the Vendor in cash an amount equal to all such Obligations to the Lessor or the Vendor, as the case may be, and all costs of collection and enforcement of the Obligations, including reasonable counsel fees and expenses, promptly or upon receipt of written demand by the Lessor or the Vendor; provided, however, that the nonreceipt of notice or demand shall not preclude an Event of Default hereunder. In addition, in furtherance of the foregoing and not in limitation of any other right which the Lessor or the Vendor may have at law or in equity against the Guarantor by virtue hereof, upon failure of the Lessee to perform any of the Obligations which are nonmonetary in nature when the same shall be required to be performed under any document, the Guarantor hereby promises, and will, upon receipt of written demand by the Lessor or the Vendor, forthwith perform strictly in accordance with the terms of such Document, or cause to be so performed, for the Trustee and the Vendor all such Obligations required to be performed. The Lessor may proceed against the Guarantor hereunder without first or con-

temporarily proceeding against the Lessee.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first set forth above.

MHC, INC.,

by

\_\_\_\_\_  
President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

CONAGRA, INC.,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

CHEMICAL BANK,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

STATE OF NEBRASKA, )  
 ) ss.:  
COUNTY OF DOUGLAS, )

On this            day of            1980, before me personally appeared L. B. Thomas, to me personally known, who, being by me duly sworn, says that he is the President of MHC, INC., an Oregon corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF NEBRASKA, )  
 ) ss.:  
COUNTY OF DOUGLAS, )

On this                    day of                    1980, before me personally appeared L. B. Thomas, to me personally known, who, being by me duly sworn, says that he is Vice President of CONAGRA, INC., a Delaware Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF NEW YORK, )  
                          ) ss.:  
COUNTY OF NEW YORK,)

On this            day of            1980, before me  
personally appeared            , to me personally  
known, who, being by me duly sworn, says that he is a Vice  
President of CHEMICAL BANK, a New York banking corporation,  
that one of the seals affixed to the foregoing instrument is  
the corporate seal of said Corporation, that said instrument  
was signed and sealed on behalf of said Corporation by  
authority of its Board of Directors and he acknowledged that  
the execution of the foregoing instrument was the free act  
and deed of said Corporation.

---

Notary Public

[Notarial Seal]

My Commission expires

# APPENDIX A TO THE LEASE

## Units Leased

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100-Ton 4,750 cubic foot Covered Hopper Cars	LO	1072	Butler, Pennsylvania	300	CAGX 700- CAGX 999	\$47,372	\$14,211,600	June 1980 at Butler, Pennsylvania

## APPENDIX B TO THE LEASE

Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>	<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>
1	108.0027%	36	112.9137%
2	108.2907	37	112.9207
3	108.5807	38	112.9137
4	108.8707	39	112.9047
5	109.1617	40	112.8957
6	109.4547	41	112.8637
7	109.7477	42	112.8307
8	108.8717	43	112.7957
9	109.1677	44	112.7377
10	109.4647	45	112.6787
11	109.7327	46	112.6187
12	109.9857	47	112.5637
13	110.2387	48	112.4877
14	110.4477	49	112.4107
15	110.6567	50	112.3197
16	110.8667	51	112.2267
17	111.0607	52	112.1327
18	111.2567	53	112.0177
19	111.4527	54	111.9007
20	111.6337	55	111.7827
21	111.8147	56	111.6437
22	111.9967	57	111.5037
23	112.1547	58	111.3607
24	112.2857	59	111.2227
25	112.4167	60	111.0677
26	112.4967	61	110.9107
27	112.5757	62	110.7417
28	112.6547	63	110.5707
29	112.7067	64	110.3977
30	112.7577	65	110.2067
31	112.8087	66	110.0137
32	112.8317	67	109.8187
33	112.8537	68	109.6047
34	112.8757	69	109.3897
35	112.9067	70	109.1717

<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>	<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>
71	108.9587%	109	96.7257%
72	108.7297	110	96.3247
73	108.4987	111	95.9197
74	108.2597	112	95.5107
75	108.0177	113	95.0957
76	107.7727	114	94.6777
77	107.5137	115	94.2547
78	107.2507	116	93.8257
79	106.9867	117	93.3927
80	106.7057	118	92.9557
81	106.4227	119	92.5227
82	106.1367	120	92.0857
83	105.8557	121	91.6457
84	105.5617	122	91.2097
85	105.2647	123	90.7707
86	104.9627	124	90.3267
87	104.6577	125	89.8797
88	104.3497	126	89.4287
89	104.0287	127	88.9737
90	103.7047	128	88.5157
91	103.3787	129	88.0537
92	103.0397	130	87.5867
93	102.6967	131	87.1237
94	102.3517	132	86.6607
95	102.0097	133	86.1937
96	101.6587	134	85.7347
97	101.3047	135	85.2717
98	100.9487	136	84.8047
99	100.5887	137	84.3377
100	100.2257	138	83.8667
101	99.8527	139	83.3907
102	99.4767	140	82.9157
103	99.0977	141	82.4357
104	98.7087	142	81.9517
105	98.3157	143	81.4707
106	97.9197	144	80.9937
107	97.5267	145	80.5127
108	97.1287	146	80.0437



<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>	<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>
147	79.5697%	186	61.3417%
148	79.0917	187	60.8727
149	78.6177	188	60.4117
150	78.1387	189	59.9417
151	77.6557	190	59.4627
152	77.1767	191	58.9777
153	76.6927	192	58.5027
154	76.2037	193	58.0187
155	75.7187	194	57.5487
156	75.2417	195	57.0687
157	74.7597	196	56.5787
158	74.2947	197	56.0997
159	73.8237	198	55.6107
160	73.3487	199	55.1127
161	72.8827	200	54.6247
162	72.4107	201	54.1267
163	71.9337	202	53.6197
164	71.4657	203	53.1037
165	70.9917	204	52.5987
166	70.5137	205	52.0827
167	70.0367	206	51.5787
168	69.5697	207	51.0647
169	69.0987	208	50.5407
170	68.6447	209	50.0277
171	68.1847	210	49.5047
172	67.7207	211	48.9717
173	67.2667	212	48.4497
174	66.8087	213	47.9167
175	66.3457	214	47.3757
176	65.8927	215	46.8237
177	65.4357	216	46.2817
178	64.9727	217	45.7307
179	64.5087	218	45.1897
180	64.0567	219	44.6387
181	63.6007	220	44.0777
182	63.1597	221	43.5267
183	62.7107	222	42.9657
184	62.2517	223	42.3957
185	61.8007	224	41.8347

<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>	<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>
225	41.2647%	267	27.8917%
226	40.6847	268	27.7207
227	40.0937	269	27.5547
228	39.5137	270	27.3847
229	38.9227	271	27.2177
230	38.3427	272	27.0507
231	37.7517	273	26.8837
232	37.1517	274	26.7167
233	36.5607	275	26.5497
234	35.9597	276	26.3827
235	35.3487	277	26.2157
236	34.7477	278	26.0487
237	34.1367	279	25.8817
238	33.5147	280	25.6647
239	32.8837	281	25.5477
240	32.2617	282	25.3807
241	30.9397	283	25.2137
242	30.7957	284	25.0467
243	30.6477	285	24.8797
244	30.4967	286	24.7127
245	30.3617	287	24.5457
246	30.2237	288	24.3787
247	30.0817	289	24.2117
248	30.6467	290	24.0447
249	30.5177	291	23.8777
250	30.3857	292	23.7107
251	30.2387	293	23.5437
252	30.1017	294	23.3767
253	29.9617	295	23.2097
254	29.8197	296	23.0427
255	29.6747	297	22.8757
256	29.5257	298	22.7087
257	29.3877	299	22.5417
258	29.2457	300	22.3747
259	29.1007	301	22.2297
260	28.9667		
261	28.8277		
262	28.6867		
263	28.5297		
264	28.3777		
265	28.2217		
266	28.0587		

ANNEX D  
to the  
Conditional Sale Agreement

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[CS&M Ref. 4876-023]

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of April 1, 1980

Between

CHEMICAL BANK,  
Lessor,

and

LA SALLE NATIONAL BANK,  
as Agent

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ASSIGNMENT OF LEASE AND AGREEMENT dated as of April 1, 1980, between CHEMICAL BANK, a New York banking corporation (the "Lessor"), and LA SALLE NATIONAL BANK, a national banking association, as agent (the "Agent") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

The Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with PULLMAN INCORPORATED (Pullman Standard Division) (the "Builder") and NORTH AMERICAN CAR CORPORATION ("NAC") providing for the sale to NAC by the Builder and the conditional sale to the Lessor by NAC of such units of railroad equipment (the "Units") described in Annex B to the CSA as are delivered to and accepted by the Lessor and settled for thereunder.

MHC, INC. (the "Lessee"), CONAGRA, INC. (the "Guarantor"), and the Lessor have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the leasing by the Lessor to the Lessee of the Units.

The Lessor will assign certain of its rights under the Lease to the Agent in order to secure the obligations of the Lessor under the CSA and as an inducement to the Investors (as defined in the Participation Agreement) to invest in the CSA Indebtedness (as defined in Section 4.3(b) of the CSA).

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

1. Assignment by Lessor. The Lessor hereby assigns to the Agent, as collateral security for the payment and performance of the obligations of the Lessor under the CSA, all the Lessor's right, title and interest, powers, privileges and other benefits under the Lease, including without limitation the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee and the Guarantor under or pursuant to the provisions of the Lease, whether as rent, casualty payment, indemnity, liquidated damages or otherwise (except any amount of indemnity or other amounts payable to the Lessor pursuant to § 6, 12, 20 or 30 of the Lease which is not required to be paid to the Vendor under the CSA and

except any liability insurance proceeds received by the Lessor pursuant to § 7 of the Lease) (such moneys are called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Agent in its own name or in the name of its nominee or in the name of the Lessor or as its attorney to demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease and to enforce compliance by the Lessee and the Guarantor with all the terms and provisions thereof.

The Agent agrees to accept any Payments made by the Lessee and the Guarantor for the account of the Lessor pursuant to the Lease. To the extent received, the Agent will apply such Payments to satisfy the obligations of the Lessor under the CSA and, so long as no event of default under the CSA or event which with notice or lapse of time or both would constitute an event of default thereunder shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is received by the Vendor (or on the next succeeding business day if funds are not timely received by the Vendor) to satisfy such obligations of the Lessor, by bank wire to the Lessor at such address as may be specified to the Agent in writing, and such balance shall be retained by the Lessor. If the Agent shall not receive any Payment when due, the Agent shall immediately notify the Lessor by telephone and confirm such notice by telegram to the address set forth in the Lease; provided, however, that the failure of the Agent to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the CSA, except that, notwithstanding the provisions of the CSA, the right to cure a monetary default in accordance with the CSA shall not be terminated until the earlier of (a) three business days after the Agent shall have sent notice to the Lessor by ~~telegram (hand delivered)~~ <sup>telex or TWX</sup> that an Event of Default under § 13.1(A)(1) of the Lease has occurred (such period to commence on the date the telegram is sent without regard to when received) or (b) ~~five~~ <sup>three</sup> business days after an Event of Default under § 13.1(A)(1) of the Lease shall have occurred.

2. No Transfer of Lessor's Obligations. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Agent to or transfer or in any way modify the liability of the Lessor under the Lease. Notwithstanding this Assignment or any subsequent assignment, all obligations of the

telex  
(129100 or 129101)  
on TWX

any  
Investor

Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns against and only against the Lessor or persons other than the Agent.

3. Obligations of Lessor. The Lessor will faithfully perform each obligation, covenant and agreement which the Lease provides is to be performed by the Lessor and, without the written consent of the Agent, will not anticipate the rents under the Lease or waive or in any manner release or discharge the Lessee or the Guarantor thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee or the Guarantor, as the case may be (including without limitation the obligation to pay the rents in the manner and at the time and place specified therein), or enter into any agreement amending, modifying or terminating the Lease. Any amendment, modification or termination of the Lease without the Agent's consent shall be void; provided, however, that the Vendor shall be deemed to have consented to any agreement in writing between the Lessee and the Lessor increasing or decreasing the rentals and casualty values payable pursuant to §§ 3, 7 and 30 of the Lease so long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Lessor under the CSA. If an event of default should occur under the CSA which would entitle the Vendor to terminate the Lease, the Vendor may terminate the Lease or rescind its termination without affecting the indemnities which by the provisions of the Lease survive the expiration of its term, all as provided in the Lease.

4. Actions with No Event of Default. So long as no event of default under the CSA or any event which with notice or lapse of time or both would constitute an event of default has occurred and is continuing, the Agent will not exercise or seek to exercise any of the rights, powers, privileges, authorizations or benefits which are assigned by the Lessor to the Agent by this Assignment, except the right to receive and apply the Payments as provided in Section 1 hereof, and the Lessor may exercise or seek to exercise its rights, powers, privileges and remedies arising out of § 13.1(a) of the Lease; provided, however, that the Lessor shall not terminate the Lease or otherwise exercise or seek to exercise any rights, powers, privileges and remedies arising out of § 13.1(b) of the Lease without the prior written consent of the Agent.

5. Agent as Lessor's Attorney. The Lessor hereby constitutes the Agent the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor or

otherwise) to demand and receive any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee and the Guarantor with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Agent may deem to be necessary or advisable.

6. Reversion to Lessor. Upon the full discharge and satisfaction of all sums due from the Lessor under the CSA, this Assignment and all rights herein assigned to the Agent shall terminate and all right, title and interest of the Agent in and to the Lease will revert to the Lessor. Promptly following such full discharge and satisfaction, the Agent will advise the Lessee and the Guarantor in writing that all sums due from the Lessor under the CSA have been fully discharged and satisfied and instruct the Lessee and the Guarantor that no further payments under the Lease are to be made to the Agent.

7. Further Assurances. The Lessor will from time to time execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Agent in order to confirm or further assure the interest of the Agent hereunder.

8. Assignment by Agent. The Agent may assign all but not less than all of the rights assigned to it hereby or arising under the Lease, including without limitation the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

9. Governing Law. This Assignment will be governed by and construed in accordance with the laws of the State of New York, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

10. Notices. The Lessor shall cause copies of all notices received in connection with the Lease and all Payments hereunder to be promptly delivered or mailed to the Agent at its address set forth in Article 22 of the CSA or at such other address as the Agent may designate. The Agent shall furnish to the Lessor such information as shall be

reasonably requested by the Lessor in order to permit the Lessor to act under the Lease or to prepare its tax returns.

11. Headings. Section headings have been provided for convenience only and shall not affect the interpretation of this Assignment.

12. Execution. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first set forth above, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first set forth above.

CHEMICAL BANK,

by

[Corporate Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary

LA SALLE NATIONAL BANK,

by

[Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary



STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK, )

On this                    day of                    1980, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, a New York banking corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this                    day of                    1980, before me personally appeared Roland K. Weber, to me personally known, who, being by me duly sworn, says that he is a Vice President of LA SALLE NATIONAL BANK, a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Notary Public

[Notarial Seal]

My Commission expires

## CONSENT AND AGREEMENT

MHC, INC., an Oregon corporation (the "Lessee"), and CONAGRA, INC., a Delaware corporation (the "Guarantor"), the lessee and the guarantor named in the Lease of Railroad Equipment (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), each hereby acknowledges receipt of a copy of the Lease Assignment and consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all Payments (as defined in the Lease Assignment) payable under the Lease directly to LA SALLE NATIONAL BANK, as agent (the "Agent"), the assignee named in the Lease Assignment, at 135 South LaSalle Street, Chicago, Illinois 60690, attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Agent);

(2) the Agent shall be entitled to the benefits of and to receive and enforce performance of all the covenants to be performed by the Lessee or the Guarantor under the Lease as though the Agent were named therein as the Lessor; and the Agent shall not by virtue of the Lease Assignment be or become subject to any liability or obligation under the Lease or otherwise; and

(3) without the prior written consent of the Agent, the Lease shall not be terminated or modified nor shall any action be taken or omitted by the Lessee or the Guarantor which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

MHC, INC.,

by

\_\_\_\_\_  
President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

CONAGRA, INC.,

by

[Corporate Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Secretary

CONDITIONAL SALE AGREEMENT

Dated as of April 1, 1980

Between

PULLMAN INCORPORATED  
(Pullman Standard Division),  
Builder,

NORTH AMERICAN CAR CORPORATION,  
Vendor,

and

CHEMICAL BANK,  
Vendee.

[Covering 300 4,750 cubic foot Covered Hopper Cars]

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# CONDITIONAL SALE AGREEMENT

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\* This Table of Contents has been provided for convenience only and does not affect any interpretation of this document.

CONDITIONAL SALE AGREEMENT dated as of April 1, 1980, between PULLMAN INCORPORATED (Pullman Standard Division), a Delaware corporation (the "Builder"), NORTH AMERICAN CAR CORPORATION, a Delaware corporation ("NAC" or the "Vendor" as the context may require, all as set forth in Section 1.3 hereof), and CHEMICAL BANK, a New York banking corporation (the "Vendee").

The Builder has agreed to construct, sell and deliver to NAC, and NAC has agreed to purchase from the Builder and conditionally sell to the Vendee, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto (the "Equipment").

The Vendee is entering into a Lease of Railroad Equipment with MHC, INC. (the "Lessee"), and CONAGRA, INC., as guarantor (the "Guarantor"), substantially in the form of Annex C hereto (the "Lease").

LA SALLE NATIONAL BANK (the "Agent") is acting as agent for certain investors (the "Investors") pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") between the Lessee, the Guarantor, the Agent, the Vendee, NAC and the Investors.

In consideration of the agreements hereinafter set forth, the parties hereto agree as follows:

## ARTICLE 1

### ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Vendee Purchase Price; Assignment. The parties hereto contemplate that the Vendee will furnish 28% of the Vendee Purchase Price (as defined in Section 4.1 hereof) of the Equipment and that an amount equal to the balance of such Vendee Purchase Price shall be paid to NAC by the Agent pursuant to an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") between the Builder, NAC and the Agent. NAC will pay to the Builder the NAC Purchase Price (as defined in Section 4.1 hereof) pursuant to the terms of Section 4.4 hereof.

1.2. Lease Assignment. The Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, certain of its rights, title and interest in and to the Lease, pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto (the "Lease Assignment"), and the Lessee and the Guarantor will acknowledge and consent thereto pursuant to a Consent and Agreement substantially in the form attached to the Lease Assignment ("Consent").

1.3. Meaning of "Vendor". The term "Vendor" whenever used in this Agreement shall mean NAC before any assignment of its rights hereunder and, after any such assignment, both any assignee as regards any assigned rights and also any assignor as regards any rights hereunder that are retained or excluded from any assignment.

1.4. Purchase Order. Any contractual arrangements between NAC and the Builder insofar as they relate to the Equipment (the "Purchase Order") shall be superseded by this Agreement, and the obligations of NAC and the Vendee to purchase and pay for the Equipment shall be exclusively and completely governed by the conditions hereof.

## ARTICLE 2

### CONSTRUCTION AND SALE

The Builder shall construct the Equipment at its plant described in Annex B hereto and will sell and deliver the Equipment to NAC. NAC will purchase the Equipment from the Builder and accept delivery thereof and immediately thereafter and without placing the Equipment into service will sell conditionally and deliver the Equipment to the Vendee. Each unit of Equipment shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, NAC, the Vendee and the Lessee (such specifications and any modifications are called the "Specifications"). The Builder represents and warrants that (i) the design, quality and component parts of each unit of Equipment to be delivered by the Builder under this Agreement shall conform, on the date of delivery and acceptance thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any,

recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, (ii) none of such component parts will be used components, (iii) none of such units will have been used so as to preclude the original use thereof by the Vendee within the meaning of Sections 48(b)(2) and 167(c)(2) of the Internal Revenue Code of 1954 (the "Code") and (iv) each unit of the Equipment will be "new section 38 property" in the hands of the Vendee within the meaning of the Code when delivered to and accepted by the Vendee. NAC represents and warrants that (a) it has done nothing and will do nothing to preclude the original use of the Equipment from commencing with the Vendee within the meaning of Sections 48(b)(2) and 167(c)(2) of the Code or to prevent any unit of Equipment from being "new section 38 property" in the hands of the Vendee within the meaning of the Code and (b) to the best of its knowledge the representations and warranties of the Builder set forth in this Section are true and correct.

### ARTICLE 3

#### INSPECTION AND DELIVERY

3.1. Place of Delivery. Upon delivery by the Builder of the units of Equipment to NAC, NAC will immediately deliver such units to the Vendee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Vendee), freight charges and storage charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder to NAC and NAC shall not have any obligation to deliver any unit of Equipment hereunder to the Vendee subsequent to the commencement of any proceedings specified in clause (c) or (d) of Section 16.1 hereof or subsequent to the occurrence of any event of default (as described in Section 16.1 hereof) or event which with notice or lapse of time or both would constitute such an event of default. The Builder and NAC agree not to deliver any unit of Equipment hereunder (a) following receipt of written notice from the Vendee or the Agent of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, or (b) until it receives notice from the Agent and the Vendee that the respective conditions contained in Paragraphs 6 and 7 of the Participation Agreement have been met.



3.2. Force Majeure. The respective obligations of the Builder and NAC as to time of delivery are subject, however, to delays resulting from causes beyond the Builder's or NAC's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors. NAC's obligation hereunder to deliver the Equipment to the Vendee is subject to the delivery of such Equipment by the Builder to NAC.

3.3. Exclusion of Equipment. Any Equipment not delivered pursuant to Section 3.1 hereof and any Equipment not delivered and accepted hereunder for any reason on or before October 31, 1980, shall be excluded from this Agreement, and NAC and the Vendee shall be relieved of their respective obligations to purchase and pay for such Equipment. If any Equipment shall be so excluded, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions of this Section 3.3 or pursuant to Section 4.1 hereof, or in the event NAC and the Vendee are relieved of their respective obligations hereunder to accept or pay for any or all units of Equipment in accordance with the terms and conditions hereof for any reason whatsoever, NAC will be obligated to accept all such units completed and delivered by the Builder and to pay the full purchase price therefor when due, all in accordance with the terms of the Purchase Order. The Vendee agrees, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as it may be reasonably requested by NAC for the purpose of acknowledging and perfecting the interest of NAC in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

3.4. Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of NAC and the Vendee (who may be employees or agents of the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant and the Equipment. The Builder agrees to inspect the materials used in the construction of the Equipment in

accordance with the standard quality control practices of the Builder and the industry. Upon or after completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to the authorized inspectors for NAC and the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications and requirements and standards applicable thereto, any one of such authorized inspectors shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of NAC and the Vendee and are marked in accordance with Article 10 hereof; provided, however, that the Builder shall not thereby be relieved of any of its warranties set forth herein. By this Section 3.4, the Vendee and NAC are each appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit by NAC and the Vendee hereunder.

3.5. Responsibilities of the Builder and NAC After Delivery. Upon delivery by the Builder to NAC and by NAC to the Vendee hereunder of a unit of Equipment and acceptance thereof hereunder at the place specified for delivery, the Builder and NAC shall have no further responsibility for nor bear any risk of any damage to or the destruction or loss of such unit; provided, however, that neither the Builder nor NAC shall thereby be relieved of any of its respective warranties set forth herein.

#### ARTICLE 4

##### PURCHASE PRICE AND PAYMENT

4.1. Meaning of "Vendee Purchase Price" and "NAC Purchase Price"; Exclusion of Units. The base price or prices per unit of Equipment to be paid by the Vendee to NAC are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as may be agreed to by NAC, the Vendee and the Lessee. The term "Vendee Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the invoice or invoices of NAC delivered to the Vendee ("NAC's Invoice"), any freight or storage charges payable by the Vendee and, if the Vendee Purchase Price is greater than

the base price or prices set forth in Annex B, NAC's Invoice shall be accompanied by or have endorsed thereon the agreement or approval of the Lessee and the Vendee. The base price or prices per unit of the Equipment to be paid by NAC to the Builder are as set forth in the Purchase Order. Such base price or prices are subject to such increase or decrease as may be agreed to by the Builder and NAC. The term "NAC Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the Builder's invoice or invoices delivered to NAC (the "Builder's Invoice"), which shall be accompanied by or have endorsed thereon the agreement or approval of NAC. If on any Closing Date the aggregate Vendee Purchase Price of Equipment for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as to which the Vendee and the Lessee may have agreed prior to the delivery of the Equipment being settled for on such Closing Date), the Builder, NAC (and any assignee of NAC) and the Vendee will enter into an agreement effective as of the date of acceptance thereof excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee and the Lessee, as will, after giving effect to such exclusion, reduce such aggregate Vendee Purchase Price to not more than the Maximum Purchase Price (or such higher amount as aforesaid) and the Vendee shall have no further obligation or liability in respect of units so excluded.

4.2. Settlement and Closing Dates. The Equipment shall be settled for in such number of groups of units (the "Groups") of the Equipment delivered to and accepted by NAC and the Vendee as is provided in Item 2 of Annex A hereto. The term "Closing Date" with respect to any Group shall be such date as is specified by the Lessee by 10 days' written notice thereof to and with the concurrence of the Vendee, the Agent, NAC and the Builder (or such later date as all required funds are received pursuant to the Participation Agreement), but in no event shall any Closing Date be later than October 31, 1980. Such notice shall specify the aggregate Vendee Purchase Price of such Group. At least five business days prior to the Closing Date with respect to a Group, the Builder shall present to NAC the Builder's Invoice and NAC shall present to the Vendee and the Lessee NAC's Invoice for the Equipment to be settled for. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized or obligated to remain closed.

4.3. Indebtedness of Vendee to Vendor. Subject to the terms of this Agreement, the Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of the Vendee Purchase Price of the Equipment and hereby promises to pay the same in cash or immediately available funds to the Vendor at such place as the Vendor may designate, as follows:

(a) on the Closing Date with respect to each Group, an amount equal to 28% of the aggregate Vendee Purchase Price of the units of Equipment in such Group; and

(b) in 180 monthly installments, in arrears, as hereinafter provided, an amount equal to the aggregate Vendee Purchase Price of the units of Equipment in such Group less the aggregate amount paid or payable with respect thereto pursuant to subsection (a) of this Section (said portion of the aggregate Vendee Purchase Price payable in installments is called the "CSA Indebtedness").

4.4. Indebtedness to Builder. NAC hereby acknowledges itself to be indebted to the Builder in the amount of the NAC Purchase Price of the Equipment and hereby promises to pay the same in full in cash or immediately available funds to the Builder on the Closing Date with respect to each Group, at such place as the Builder may designate. Notwithstanding any provision herein to the contrary, in the event that NAC refuses or is unable for any reason (including its bankruptcy or insolvency) to perform its obligations pursuant to this Section 4.4, the Vendee shall have the right (but not the obligation) to perform such obligations and to pay the NAC Purchase Price for the units in such Group to the Builder, in which event the Vendee shall have the right to receive the payments to be made to NAC for such units pursuant to Section 4 of the CSA Assignment and, for all purposes of this Agreement and the CSA Assignment, the Vendee Purchase Price for such units shall be deemed to be the NAC Purchase Price therefor. Nothing herein shall be deemed to affect in any way the remedies available to the Vendee against NAC in such event.

4.5. CSA Indebtedness; Payment Dates; Interest.

(a) The installments of the CSA Indebtedness shall be payable monthly on the first day of each month, commencing on the first day of the month next succeeding the Interim Payment Date (as defined below) (each such date is called a "Payment Date"). The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of

which such indebtedness was incurred at the rate per annum set forth below. Interest on the unpaid balance of CSA Indebtedness shall be payable to the extent accrued on the first day of the month next succeeding the last Closing Date hereunder (the "Interim Payment Date"), and on each Payment Date thereafter. The amounts of principal of and interest on the CSA Indebtedness payable on each Payment Date shall be calculated to be substantially in proportion to the allocation of principal and interest on such Payment Date set forth in Schedule I hereto and the aggregate of such installments of principal shall completely amortize the CSA Indebtedness at maturity. The Vendee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule showing the respective amounts of principal and interest payable on each Payment Date.

(b) Interest on the unpaid balance of CSA Indebtedness shall be payable at the rate of 10.75% per annum; except that if the income from operations before disposal of assets, taxes and tax credit of the Guarantor for its fiscal year ended May 25, 1980, as reflected in the financial statements provided pursuant to Paragraph 10 of the Participation Agreement, is (i) less than \$17,000,000, interest shall be payable at the rate of 10.875% per annum or (ii) greater than \$25,000,000, interest shall be payable at the rate of 10.625% per annum. In the event that the interest rate determined in accordance with this subsection is not 10.75% per annum, this Agreement (including Schedule I hereto) will be amended to reflect the changed interest rate, which shall be effective from the Closing Date with respect to which such CSA Indebtedness was incurred.

(c) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the next succeeding business day.

4.6. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months, except that interest payable on the Interim Payment Date shall be computed on an actual elapsed day, 366-day year, basis.

4.7. Penalty Interest. The Vendee will pay interest at the rate of 1% per annum in excess of the rate determined in accordance with subsection (b) of Section 4.5 hereof (the "Penalty Rate") upon all amounts remaining unpaid after the

same shall have become due and payable pursuant to the terms hereof, or such lesser amount as shall be legally enforceable.

4.8. Currency of Payment. All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 or 16 hereof, the Vendee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

4.9. Liability of Vendee Limited to "Income and Proceeds from Equipment". Notwithstanding any other provision of this Agreement (including but not limited to any provision of Articles 16 and 17 hereof, except as set forth in this Section 4.9), but not limiting the effect of Article 23 hereof, the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to Section 4.3(a) hereof and the proviso to Section 13.3 hereof, shall not exceed an amount equal to and shall be payable only out of the "income and proceeds from the Equipment", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Vendee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Vendee or any assignee of the Vendee. As used herein the term "income and proceeds from the Equipment" shall mean

(i) if one of the events of default specified in Section 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of any Casualty Occurrence (as defined in § 7 of the Lease) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 13 or any other provision of the Lease (except any indemnity or other amounts paid or payable to the Vendee pursuant to § 6, 12, 20 or 30 of the Lease which is not required to be

paid over hereunder by the Vendee to the Vendor and any liability insurance proceeds payable to the Vendee under § 7 of the Lease) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of any Casualty Occurrence) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of any Casualty Occurrence) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Vendee Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this Section, it will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this Section.

## ARTICLE 5

## SECURITY INTEREST IN EQUIPMENT

5.1. Vendor To Retain Security Interest; Accessions Are Part of Equipment. The Vendor hereby retains a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease. Such retention of a security interest is solely to secure performance by the Vendee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Vendee), and, subject thereto, ownership of the Equipment shall upon delivery and acceptance pass to and remain in the Vendee subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Vendee Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Railroads, the Interstate Commerce Commission, the United States Department of Transportation or any other applicable regulatory body shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used herein.

5.2. Obligations upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Vendee Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor, except that the Vendor, if so requested by the Vendee at that time, will, at the Vendee's expense, (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby, and deliver such instrument to the Vendee at its address referred to in



Article 22 hereof, (b) execute and deliver at the same place, for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights existing or that may be acquired in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

## ARTICLE 6

### TAXES

6.1. General Tax Indemnification. Whether or not any of the transactions contemplated hereby are consummated, the Vendee agrees to pay and to indemnify and hold the Vendor harmless from all Taxes (as defined in § 6 of the Lease); excluding, however, (i) Taxes of the United States of America or any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured by the net income or excess profits of the Vendor, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Article 6, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its worldwide income without regard to the transactions contemplated by this Agreement shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; and (iii) Taxes which are imposed on or measured by the net income of the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Vendee has not agreed to pay or

indemnify against pursuant to this Article 6; provided, however, that the Vendee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in Section 6.2 hereof.

6.2. Claims; Contests; Refunds. If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Vendee. If reasonably requested by the Vendee in writing, the Vendor shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Vendee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) paying the same under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Vendee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor, which shall not be unreasonably withheld. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Vendee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Vendee the amount of such refund or interest net of unreimbursed expenses; provided, however, that no event of default set forth in Section 16.1 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and for so long as the same shall be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Vendee under or arising out of this Article 6, the Vendee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Vendee.

6.4. Survival. All of the obligations of the Vendee under this Article 6 shall survive and continue, notwithstanding payment in full of all other amounts due under this Agreement.

## ARTICLE 7

### MAINTENANCE AND CASUALTY OCCURRENCES

7.1. Maintenance. The Vendee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order and repair, ordinary wear and tear excepted.

7.2. Casualty Occurrences. In the event that any unit of Equipment shall suffer a Casualty Occurrence (as defined in § 7 of the Lease), the Vendee shall, promptly after it shall have received notice from the Lessee or has otherwise been informed of such Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the Casualty Payment Date (as defined in § 7 of the Lease), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as defined in Section 7.3 hereof) of such unit, together with an amount equal to accrued interest thereon as hereinafter provided. The Vendee shall file or cause to be filed with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this Section shall be applied (after the payment of principal and interest due on such date in respect of CSA Indebtedness not being prepaid) to prepay the CSA Indebtedness, without penalty or premium, ratably in accordance with the unpaid balance of each installment, together with all interest accrued on the portion of the CSA Indebtedness being prepaid. The Vendee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, calculated as provided in Section 4.5 hereof.

7.3. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Vendee Purchase Price thereof referred to in Section 4.3(b) hereof remaining unpaid on the respective Casualty Payment Date after giving effect to the rental payment due on such Date (but without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any

other unit). For the purpose of this Section, each payment of the Vendee Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Vendee Purchase Price of such unit bears to the aggregate original Vendee Purchase Price of all the Equipment.

7.4. Obligations upon Payment of Casualty Value.  
Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor, except that the Vendor, if so requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

## ARTICLE 8

### INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of any unit suffering a Casualty Occurrence, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Vendee; provided, however, that no event of default shall have occurred and at such time be continuing hereunder and the Vendee shall have made payment of the Casualty Value of such unit to the Vendor. All insurance proceeds received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

## ARTICLE 9

### REPORTS AND INSPECTIONS

On or before March 31 in each year, commencing with the year 1981, the Vendee shall cause to be furnished to the

Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Vendee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

## ARTICLE 10

### MARKING OF EQUIPMENT

The Vendee will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor which previously shall have been filed with the Vendor and filed by or on behalf of the Vendee in all public offices where this Agreement shall have been filed. Except as aforesaid, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

## ARTICLE 11

### COMPLIANCE WITH APPLICABLE LAWS

During the term of this Agreement, the Vendee will comply and will cause every lessee or user of the Equipment to comply in all respects (including without limitation the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in § 10 of the Lease), and in the event that any Applicable Law requires any alteration, replacement or addition of or to any part on any unit of the Equipment, the Vendee will or will cause such lessee or user to conform therewith at no expense to the Vendor; provided, however, that the Vendee or such lessee or user may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

## ARTICLE 12

## POSSESSION AND USE

12.1. Possession and Use of Equipment by Vendee.

So long as an event of default shall not have occurred and be continuing under this Agreement, the Vendee shall be entitled to the possession and use of the Equipment from and after delivery of the Equipment by NAC to the Vendee, but only upon and subject to all the terms and conditions of this Agreement.

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights and shall be subject to the remedies of the Vendor under this Agreement. The Lease shall not be amended in any material respect or terminated (except in accordance with its terms) without the prior written consent of the Vendor, which shall not be unreasonably withheld.

## ARTICLE 13

## PROHIBITION AGAINST LIENS

13.1. Vendee To Discharge Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to any unit of Equipment equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. This covenant will not be deemed breached by reason of liens for taxes,

assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

13.3. Article 13 Subject to Article 23 Except in Certain Instances. The obligations of the Vendee under this Article 13 are subject to the limitations contained in Article 23 hereof; provided, however, that the Vendee will pay or discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Vendee or its successors or assigns not arising out of the transactions contemplated hereby or in other documents mentioned herein (but including net income taxes arising out of the receipt of rentals and other payments under the Lease and any other proceeds from the Equipment) which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or the Vendee's interest in the Lease and the payments to be made thereunder, but the Vendee shall not be required to pay or discharge any such tax, claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement.

#### ARTICLE 14

##### INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Vendee shall pay and shall protect, indemnify and hold the Vendor and its successors, assigns, agents and servants (the "Indemnified Persons") harmless from and against any and all Indemnified Matters (as defined in § 12 of the Lease). The Vendee shall be obligated under this Article 14, whether or not any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Vendee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Vendee may and, upon such Indemnified Person's request, will, at the Vendee's expense,

resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Vendee and approved by such Indemnified Person (such approval not to be unreasonably withheld) and, in the event of any failure by the Vendee to do so, the Vendee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Vendee is required to make any payment under this Article 14, the Vendee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States of America or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Vendee agree to give each other written notice of any claim or liability hereby indemnified against promptly upon obtaining knowledge thereof. Upon the payment in full of any indemnities as contained in this Article 14 by the Vendee, and provided that no event of default described in Section 16.1 hereof (or other event which with notice or lapse of time or both would constitute such an event of default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the Indemnified Matter. Any payments received by such Indemnified Person from any person (other than the Vendee) as a result of any Indemnified Matter shall be paid over to the Vendee to the extent necessary to reimburse the Vendee for indemnification payments previously made in respect of such Indemnified Matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Vendee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.



14.3. Vendee Not Released if Equipment Damaged or Lost. The Vendee will bear the responsibility for and risk of any damage to or the destruction or loss of any unit of Equipment and shall not be released from its obligations hereunder in any such event.

14.4. Warranties of Builder; Patent Indemnities. The agreement of the parties relating to the Builder's warranties of material and workmanship and to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

14.5. Warranty Disclaimer by NAC. NAC DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE EQUIPMENT OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE EQUIPMENT DELIVERED TO THE VENDEE HEREUNDER, AND NAC DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF SUCH UNITS FOR ANY PARTICULAR PURPOSE, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT (EXCEPT AS PROVIDED IN ARTICLE 2 OR THIS ARTICLE 14), EITHER UPON DELIVERY THEREOF TO THE VENDEE OR OTHERWISE.

## ARTICLE 15

### ASSIGNMENTS

15.1. Assignment by Vendee. Without the consent of the Vendor, the Vendee will not transfer the right to possession of any unit of Equipment (except to the Lessee pursuant to the Lease) or sell, assign, transfer or otherwise dispose of its rights under this Agreement, except that the rights of the Vendee hereunder shall be assignable to (a) any Affiliate of the Vendee (without relieving the Vendee of its obligations hereunder) or to any bank, trust company, financing company or other financial institution having a combined capital and surplus of at least \$50,000,000 or (b) any other person, provided that the Vendee shall remain primarily liable for its obligations hereunder and shall, at the time of such assignment, agree in writing in a manner reasonably satisfactory to the Vendor and any assignee hereof to indemnify the Vendor and any assignee hereof and to hold the Vendor and any assignee hereof harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against the Vendor or any assignee hereof resulting from, arising out of or in

connection with such assignment. For the purpose of this Article 15, "Affiliate" shall mean any corporation which directly or indirectly controls or is controlled by or is under common control with the Vendee, and "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a corporation, whether through the ownership of voting securities or by contract or otherwise.

15.2. Assignment by Vendor. All but not less than all of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to or relieve the Builder or NAC from any of the obligations of the Builder to construct and deliver the Equipment to NAC or of NAC to deliver the Equipment to the Vendee in accordance herewith or to respond to their respective warranties and indemnities herein or relieve the Vendee of its obligations to NAC pursuant to Article 4 hereof or NAC's obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. Notice of Assignment by Vendor. Upon any such assignment by the Vendor, either the assignor or the assignee shall give written notice to the Vendee, together with a copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall be made only to the assignee in such manner as it may direct.

15.4. No Setoff Against CSA Indebtedness upon Assignment. The Vendee recognizes that this Agreement will be assigned to the Agent as provided in the CSA Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the assignee to the

entire unpaid CSA Indebtedness in respect of the Vendee Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by the Vendee arising out of any breach of any obligation of NAC or the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or with respect to any indemnity herein contained or any other indebtedness or liability at any time owing to the Vendee by any person. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against NAC, the Builder or such other person, as the case may be.

## ARTICLE 16

### DEFAULTS

#### 16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness.

In the event that any one or more of the following events of default shall occur and be continuing:

(a) the Vendee shall fail to pay or cause to be paid in full (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Vendee) any sum payable by the Vendee pursuant to Article 4 hereof when payment thereof shall be due hereunder and such default shall continue for 5 days plus 3 business days after the date such payment is due and payable or any sum payable by the Vendee pursuant to Article 7 hereof when payment thereof shall be due hereunder and such default shall continue for 5 days after the date such payment is due and payable;

(b) the Vendee, the Lessee or the Guarantor shall, for more than 30 days after the Vendor shall have given notice in writing demanding performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Vendee) or of any other agreement contemplated by the Participation Agreement made expressly for the benefit of the Vendor, on its part to be kept and performed, or to make provision satisfactory to the Vendor for such compliance;

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Vendee, the Lessee or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee under this Agreement or the Lessee and the Guarantor under the Lease and the Consent shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed pursuant to a court order or decree by a trustee or trustees appointed for the Vendee, the Lessee or the Guarantor, as the case may be (whether or not subject to ratification), in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees;

(d) any other proceeding shall be commenced by or against the Vendee, the Lessee or the Guarantor for any relief which includes or might result in any modification of the obligations of the Vendee hereunder or the Lessee or the Guarantor under the Lease or the Consent under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced pursuant to a court order or decree by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee, the Lessee or the Guarantor, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers;

(e) an Event of Default under § 13.1(A)(1) of the Lease shall continue for more than 2 consecutive

monthly Payment Dates or shall have occurred on more than 4 Payment Dates during the term of the Lease, whether or not an event of default under Section 16.1(a) hereof shall have occurred; or

(f) an Event of Default under any Section other than § 13.1(A)(1) of the Lease shall have occurred;

then at any time after the occurrence of such an event of default and so long as the same shall be continuing, the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the term of the Lease immediately upon such notice to terminate; provided, however, that such termination shall not be in derogation of or impair the rights of the Vendee or the Agent (under the assignment thereof), as the case may be, to enforce compliance by the Lessee or the Guarantor with any of its respective covenants and agreements under the Lease or to enforce any of its rights and remedies under § 13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Vendee or the Agent (under the assignment thereof), as the case may be, to sue for and recover damages provided for in § 13 of the Lease upon the occurrence of an event of default under the Lease, and/or (ii) declare (a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable; provided, however, that the Vendor shall not exercise its rights pursuant to this clause (ii) unless it shall exercise its right to terminate the Lease pursuant to the preceding clause (i) to the extent the Lease is then terminable by the Vendor. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee wherever situated, subject to the provisions of Articles 4 and 23 hereof. The Vendee shall promptly notify the Vendor of any event of which it has knowledge which constituted, constitutes or with notice or lapse of time or both would constitute an event of default under this Agreement. For this purpose, knowledge of the Vendee shall mean actual knowledge by a responsible employee or officer of its Specialized Leasing Department. A copy of any notice given to the Vendee pursuant to this Section 16.1 shall also be

given to the Lessee, but the failure to give any such notice shall not relieve the Lessee of any of its obligations under this Agreement or the Lease.

In the case of an event of default under subparagraph (c) or (d) above, the Vendee shall have the option for a period of 30 days after the commencement of such event of default to prepay, without premium or penalty, all, but not less than all, the outstanding CSA Indebtedness plus interest accrued to the date of such payment; it being understood, however, that unless and until the Vendee has unconditionally agreed with the Vendor by written notice to the Vendor to exercise such option, the Vendor may exercise its rights and remedies upon the occurrence of an event of default under this Agreement.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this Section, no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

## ARTICLE 17

### REMEDIES

17.1. Vendor May Take Possession of Equipment. At any time during the continuance of a Declaration of Default and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, the Vendor may take or cause to be taken by its agent or agents immediate possession of the Equipment or one or more of the units thereof without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available

trackage and other facilities or means of the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. If the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) place such units upon such storage tracks as the Vendor reasonably may designate;

(b) cause such units to be stored on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the same to be transported to any reasonable place, as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and permit the inspection thereof by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence to the agreement between the parties, and the Vendee acknowledges that upon application to any court of equity having competent jurisdiction the Vendor shall be entitled to a decree requiring specific performance thereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of Equipment in any commercially reasonable manner.

17.3. Vendor May Dispose of or Retain Equipment. At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as provided in Section 17.1 hereof) may, upon the consent of the Vendee, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the

Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment, the Vendee consents thereto and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment and the Vendee shall have no further rights or obligations hereunder; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided further, that if the Lessee or any other persons notified under the terms of this Section object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Vendee's Right of Redemption. At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment or one or more of the units thereof free from any and all claims of the Vendee, the Lessee, the Guarantor or any other party claiming from, through or under the Vendee, the Lessee or the Guarantor, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with inter-



est thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fee and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited against the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Vendee, the Lessee or the Guarantor may bid for and become the purchaser of any unit of Equipment so offered for sale. The Vendee and the Lessee shall be given written notice of such sale not less than 10 business days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee, the Guarantor and the Vendee to purchase or provide a purchaser within 10 business days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee, the Lessee or the Guarantor (except to the extent of surplus money received as provided in Section 17.7 hereof), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. Effect of Remedies and Powers and Exercise Thereof. Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power

and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. Deficiency or Surplus. If there shall remain any amount due to the Vendor under the provisions of this Agreement after applying all sums of money realized by it under the remedies herein provided, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If there shall remain a surplus in the possession of the Vendor after applying as aforesaid all sums realized by the Vendor, such surplus shall be paid to the Vendee.

17.8. Expenses. The Vendee will pay all reasonable fees, costs and expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

## ARTICLE 18

## APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall be ineffective as to such jurisdiction without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the parties hereto to the full extent permitted by law, it being the intention of the parties hereto that this Agreement (except such portion as relates to the sale of the Equipment by the Builder to NAC) shall be deemed to be a conditional sale and enforced as such.

18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, including notice of intention to take possession of or to sell or lease any one or more units of Equipment, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

## ARTICLE 19

## FILING

The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and the Vendee will from time to time perform any other act and will execute, deliver and file any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the reasonable satisfaction of the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing satisfactory to the Vendor.

## ARTICLE 20

## REPRESENTATIONS AND WARRANTIES OF BUILDER AND NAC

20.1. Binding Agreement. Each of NAC and the Builder hereby represents and warrants to each other and to the Vendee and its successors and assigns that this Agreement has been duly authorized by it and lawfully executed and delivered by it for a valid consideration and that, assuming due authorization, execution and delivery by the other parties hereto, this Agreement is a legal, valid and binding agreement, enforceable against the Builder or NAC in accordance with its terms.

20.2. Good Title to NAC. The Builder represents and warrants to NAC and the Vendee that, at the time of delivery and acceptance of each unit of Equipment under this Agreement, the Builder had and pursuant to this Agreement will transfer to NAC good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the Lessee under the Lease.

20.3. Good Title to Vendee. NAC represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of Equipment under this Agreement, NAC had and pursuant to this Agreement the Vendor will transfer to the Vendee good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the Lessee under the Lease.

20.4. ERISA. Each of NAC and the Builder represents to each other and to the Vendee that it is not entering into this Agreement or into any other transaction contemplated by the Participation Agreement directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, insofar as is known to it, any party hereto or to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

## ARTICLE 21

## HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

21.1. Headings. All article and section headings are provided for convenience only and shall not affect any interpretation of this Agreement.

21.2. Effect and Modification of Agreement. Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

## ARTICLE 22

## NOTICES

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first-class mail, postage prepaid, at its chief place of business at the following specified addresses:

(a) to the Vendee, at 55 Water Street (Suite 1822), New York, New York 10087, attention of Manager, Specialized Leasing Group, with a copy to Richard H. Gilden, Esq., Messrs. Rosenman Colin Freund Lewis & Cohen, 575 Madison Avenue, New York, New York 10022;

(b) to the Builder, at the address specified in Item 1 of Annex A hereto;

(c) to NAC, at 222 South Riverside Plaza, Chicago, Illinois 60606, attention of Vice-President-Law;

(d) to any assignee of the Vendor or of the Vendee, at such address as may have been furnished in writing to the Vendee or the Vendor, as the case may be, by such assignee,

or at such other address as may have been furnished in writing to the other parties to this Agreement.

## ARTICLE 23

### IMMUNITIES; SATISFACTION OF UNDERTAKINGS

23.1. No Recourse Against Certain Persons. No recourse shall be had in respect of any obligation due under this Agreement or referred to herein against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

23.2. Satisfaction of Certain Covenants. The obligations of the Vendee hereunder, except as set forth in Sections 4.3(a) and 13.3 hereof, shall be deemed satisfied in full in all respects and be of no further force or effect insofar as they involve personal liability for money or performance or otherwise of the Vendee, other than out of "income and proceeds from the Equipment", by the Lessee's execution and delivery of the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations hereunder or under the Lease; but if the same shall not be performed, they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor; provided, however, that the Vendor shall be deemed to have consented to any agreement in writing between the Lessee and the Vendee increasing or decreasing the rentals and casualty values payable pursuant to §§ 3, 7 and 30 of the Lease so long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Vendee hereunder.

## ARTICLE 24

## GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, such additional rights, if any, arising out of the filing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof may be filed or in which any unit of Equipment shall be located, and such rights, if any, arising out of the marking of Equipment.

## ARTICLE 25

## EXECUTION

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument. Although for convenience this Agreement is dated as of the date first set forth above, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first set forth above.

PULLMAN INCORPORATED  
(Pullman Standard Division),

[Corporate Seal]

by

Attest:

Vice President-Freight Unit

Assistant Secretary

NORTH AMERICAN CAR CORPORATION,

[Corporate Seal]

by

Attest:

\_\_\_\_\_  
Vice President

\_\_\_\_\_  
Assistant Secretary


CHEMICAL BANK,

by

[Corporate Seal]

Attest:

  
\_\_\_\_\_  
Vice President

  
\_\_\_\_\_  
Assistant Secretary



STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this            day of            1980, before me  
personally appeared            , to me  
personally known, who, being by me duly sworn, says that he  
is a Vice President-Freight Unit of PULLMAN INCORPORATED  
(Pullman Standard Division), a Delaware corporation, that one  
of the seals affixed to the foregoing instrument is the  
corporate seal of said Corporation, that said instrument was  
signed and sealed on behalf of said Corporation by authority  
of its Board of Directors and he acknowledged that the  
execution of the foregoing instrument was the free act and  
deed of said Corporation.

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Notary Public

[Notarial Seal]

My Commission expires

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this                      day of                      1980, before me personally appeared                      , to me personally known, who, being by me duly sworn, says that he is a Vice President of NORTH AMERICAN CAR CORPORATION, a Delaware corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK, )

On this 27 day of JUNE 1980, before me personally appeared John R. Feldman, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, a New York banking corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

**HELEN J. BURNETTE**  
Notary Public, State of New York  
No. 41-5535200  
Qualified in Queens County  
Certificate filed in New York County  
Commission Expires March 30, 1982

## SCHEDULE I

Allocation Schedule of Each \$1,000,000 of CSA  
Indebtedness Payable in (i) One Interim Payment of  
Interest Only on the Interim Payment Date and (ii) 180 Monthly  
Installments of Principal and Interest  
Commencing One Month after the Interim Payment Date

<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
	*	*	-0-	\$1,000,000.00
1	\$11,209.48	\$8,958.33	\$ 2,251.15	997,748.85
2	11,209.48	8,938.17	2,271.31	995,477.54
3	11,209.48	8,917.82	2,291.66	993,185.88
4	11,209.48	8,897.29	2,312.19	990,873.70
5	11,209.48	8,876.58	2,332.90	988,540.80
6	11,209.48	8,855.68	2,353.80	986,187.00
7	11,209.48	8,834.59	2,374.89	983,812.11
8	11,209.48	8,813.32	2,396.16	981,415.95
9	11,209.48	8,791.85	2,417.63	978,998.32
10	11,209.48	8,770.19	2,439.29	976,559.03
11	11,209.48	8,748.34	2,461.14	974,097.89
12	11,209.48	8,726.29	2,483.19	971,614.70
13	11,209.48	8,704.05	2,505.43	969,109.27
14	11,209.48	8,681.60	2,527.88	966,581.39
15	11,209.48	8,658.96	2,550.52	964,030.87
16	11,209.48	8,636.11	2,573.37	961,457.50
17	11,209.48	8,613.06	2,596.42	958,861.08
18	11,209.48	8,589.80	2,619.68	956,241.40
19	11,209.48	8,566.33	2,643.15	953,598.25
20	11,209.48	8,542.65	2,666.83	950,931.42
21	11,209.48	8,518.76	2,690.72	948,240.70
22	11,209.48	8,494.66	2,714.82	945,525.88
23	11,209.48	8,470.34	2,739.14	942,786.74
24	11,209.48	8,445.80	2,763.68	940,023.06
25	11,209.48	8,421.04	2,788.44	937,234.62
26	11,209.48	8,396.06	2,813.42	934,421.20
27	11,209.48	8,370.86	2,838.62	931,582.59
28	11,209.48	8,345.43	2,864.05	928,718.54
29	11,209.48	8,319.77	2,889.71	925,828.83
30	11,209.48	8,293.88	2,915.60	922,913.23
31	11,209.48	8,267.76	2,941.72	919,971.51
32	11,209.48	8,241.41	2,968.07	917,003.44

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\* Interest accrued only.

<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
33	\$11,209.48	\$8,214.82	\$ 2,994.66	\$ 914,008.78
34	11,209.48	8,188.00	3,021.48	910,987.30
35	11,209.48	8,160.93	3,048.55	907,938.76
36	11,209.48	8,133.62	3,075.86	904,862.90
37	11,209.48	8,106.06	3,103.42	901,759.48
38	11,209.48	8,078.26	3,131.22	898,628.26
39	11,209.48	8,050.21	3,159.27	895,468.98
40	11,209.48	8,021.91	3,187.57	892,281.41
41	11,209.48	7,993.35	3,216.13	889,065.28
42	11,209.48	7,964.54	3,244.94	885,820.34
43	11,209.48	7,935.47	3,274.01	882,546.34
44	11,209.48	7,906.14	3,303.34	879,242.99
45	11,209.48	7,876.55	3,332.93	875,910.06
46	11,209.48	7,846.69	3,362.79	872,547.27
47	11,209.48	7,816.57	3,392.91	869,154.37
48	11,209.48	7,786.17	3,423.31	865,731.05
49	11,209.48	7,755.51	3,453.97	862,277.09
50	11,209.48	7,724.57	3,484.91	858,792.18
51	11,209.48	7,693.35	3,516.13	855,276.05
52	11,209.48	7,661.85	3,547.63	851,728.41
53	11,209.48	7,630.07	3,579.41	848,149.01
54	11,209.48	7,598.00	3,611.48	844,537.53
55	11,209.48	7,565.65	3,643.83	840,893.70
56	11,209.48	7,533.01	3,676.47	837,217.23
57	11,209.48	7,500.07	3,709.41	833,507.83
58	11,209.48	7,466.84	3,742.64	829,765.19
59	11,209.48	7,433.31	3,776.17	825,989.02
60	11,209.48	7,399.48	3,810.00	822,179.02
61	11,209.48	7,365.35	3,844.13	818,334.88
62	11,209.48	7,330.92	3,878.56	814,456.32
63	11,209.48	7,296.17	3,913.31	810,543.01
64	11,209.48	7,261.11	3,948.37	806,594.64
65	11,209.48	7,225.74	3,983.74	802,610.90
66	11,209.48	7,190.06	4,019.42	798,591.48
67	11,209.48	7,154.05	4,055.43	794,536.05
68	11,209.48	7,117.72	4,091.76	790,444.29
69	11,209.48	7,081.06	4,128.42	786,315.87
70	11,209.48	7,044.08	4,165.40	782,150.47
71	11,209.48	7,006.76	4,202.72	777,947.75
72	11,209.48	6,969.12	4,240.36	773,707.39
73	11,209.48	6,931.13	4,278.35	769,429.04
74	11,209.48	6,892.80	4,316.68	765,112.36
75	11,209.48	6,854.13	4,355.35	760,757.01

<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
76	\$11,209.48	\$6,815.11	\$ 4,394.37	\$ 756,362.64
77	11,209.48	6,775.75	4,433.73	751,928.91
78	11,209.48	6,736.03	4,473.45	747,455.46
79	11,209.48	6,695.96	4,513.52	742,941.94
80	11,209.48	6,655.52	4,553.96	738,387.98
81	11,209.48	6,614.73	4,594.75	733,793.23
82	11,209.48	6,573.56	4,635.92	729,157.30
83	11,209.48	6,532.03	4,677.45	724,479.85
84	11,209.48	6,490.13	4,719.35	719,760.50
85	11,209.48	6,447.85	4,761.63	714,998.87
86	11,209.48	6,405.20	4,804.28	710,194.59
87	11,209.48	6,362.16	4,847.32	705,347.27
88	11,209.48	6,318.74	4,890.74	700,456.52
89	11,209.48	6,274.92	4,934.56	695,521.96
90	11,209.48	6,230.72	4,978.76	690,543.20
91	11,209.48	6,186.12	5,023.36	685,519.84
92	11,209.48	6,141.12	5,068.36	680,451.48
93	11,209.48	6,095.71	5,113.77	675,337.71
94	11,209.48	6,049.90	5,159.58	670,178.13
95	11,209.48	6,003.68	5,205.80	664,972.34
96	11,209.48	5,957.04	5,252.44	659,719.90
97	11,209.48	5,909.99	5,299.49	654,420.41
98	11,209.48	5,862.52	5,346.96	649,073.45
99	11,209.48	5,814.62	5,394.86	643,678.59
100	11,209.48	5,766.29	5,443.19	638,235.40
101	11,209.48	5,717.53	5,491.95	632,743.45
102	11,209.48	5,668.33	5,541.15	627,202.30
103	11,209.48	5,618.69	5,590.79	621,611.51
104	11,209.48	5,568.60	5,640.88	615,970.62
105	11,209.48	5,518.07	5,691.41	610,279.22
106	11,209.48	5,467.08	5,742.40	604,536.82
107	11,209.48	5,415.64	5,793.84	598,742.98
108	11,209.48	5,363.74	5,845.74	592,897.23
109	11,209.48	5,311.37	5,898.11	586,999.12
110	11,209.48	5,258.53	5,950.95	581,048.17
111	11,209.48	5,205.22	6,004.26	575,043.91
112	11,209.48	5,151.44	6,058.04	568,985.87
113	11,209.48	5,097.17	6,112.31	562,873.56
114	11,209.48	5,042.41	6,167.07	556,706.49
115	11,209.48	4,987.16	6,222.32	550,484.17
116	11,209.48	4,931.42	6,278.06	544,206.11
117	11,209.48	4,875.18	6,334.30	537,871.81
118	11,209.48	4,818.43	6,391.05	531,480.77
119	11,209.48	4,761.18	6,448.30	525,032.47

<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
120	\$11,209.48	\$4,703.42	\$ 6,506.06	\$ 518,526.41
121	11,209.48	4,645.13	6,564.35	511,962.06
122	11,209.48	4,586.33	6,623.15	505,338.91
123	11,209.48	4,526.99	6,682.49	498,656.42
124	11,209.48	4,467.13	6,742.35	491,914.07
125	11,209.48	4,406.73	6,802.75	485,111.32
126	11,209.48	4,345.79	6,863.69	478,247.63
127	11,209.48	4,284.30	6,925.18	471,322.45
128	11,209.48	4,222.26	6,987.22	464,335.23
129	11,209.48	4,159.67	7,049.81	457,285.42
130	11,209.48	4,096.52	7,112.96	450,172.46
131	11,209.48	4,032.79	7,176.69	442,995.77
132	11,209.48	3,968.50	7,240.98	435,754.79
133	11,209.48	3,903.64	7,305.84	428,448.95
134	11,209.48	3,838.19	7,371.29	421,077.66
135	11,209.48	3,772.15	7,437.33	413,640.33
136	11,209.48	3,705.53	7,503.95	406,136.38
137	11,209.48	3,638.31	7,571.17	398,565.21
138	11,209.48	3,570.48	7,639.00	390,926.21
139	11,209.48	3,502.05	7,707.43	383,218.78
140	11,209.48	3,433.00	7,776.48	375,442.30
141	11,209.48	3,363.34	7,846.14	367,596.16
142	11,209.48	3,293.05	7,916.43	359,679.73
143	11,209.48	3,222.13	7,987.35	351,692.38
144	11,209.48	3,150.58	8,058.90	343,633.48
145	11,209.48	3,078.38	8,131.10	335,502.38
146	11,209.48	3,005.54	8,203.94	327,298.44
147	11,209.48	2,932.05	8,277.43	319,021.01
148	11,209.48	2,857.90	8,351.58	310,669.43
149	11,209.48	2,783.08	8,426.40	302,243.03
150	11,209.48	2,707.59	8,501.89	293,741.14
151	11,209.48	2,631.43	8,578.05	285,163.09
152	11,209.48	2,554.59	8,654.89	276,508.20
153	11,209.48	2,477.05	8,732.43	267,775.77
154	11,209.48	2,398.82	8,810.66	258,965.11
155	11,209.48	2,319.90	8,889.58	250,075.53
156	11,209.48	2,240.26	8,969.22	241,106.31
157	11,209.48	2,159.91	9,049.57	232,056.74
158	11,209.48	2,078.84	9,130.64	222,926.10
159	11,209.48	1,997.05	9,212.43	213,713.67
160	11,209.48	1,914.52	9,294.96	204,418.71
161	11,209.48	1,831.25	9,378.23	195,040.48
162	11,209.48	1,747.24	9,462.24	185,578.24

<u>Installment No.</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
163	\$11,209.48	\$1,662.47	\$ 9,547.01	\$ 176,031.23
164	11,209.48	1,576.95	9,632.53	166,398.70
165	11,209.48	1,490.65	9,718.83	156,679.87
166	11,209.48	1,403.59	9,805.89	146,873.98
167	11,209.48	1,315.75	9,893.73	136,980.25
168	11,209.48	1,227.11	9,982.37	126,997.88
169	11,209.48	1,137.69	10,071.79	116,926.09
170	11,209.48	1,047.46	10,162.02	106,764.07
171	11,209.48	956.43	10,253.05	96,511.02
172	11,209.48	864.58	10,344.90	86,166.12
173	11,209.48	771.90	10,437.58	75,728.54
174	11,209.48	678.40	10,531.08	65,197.46
175	11,209.48	584.06	10,625.42	54,572.04
176	11,209.48	488.87	10,720.61	43,851.43
177	11,209.48	392.84	10,816.64	33,034.79
178	11,209.48	295.94	10,913.54	22,121.25
179	11,209.48	198.17	11,011.31	11,109.94
180	11,209.47	99.53	11,109.94	-0-

Annex A  
to the  
Conditional Sale Agreement

- Item 1: Pullman Incorporated (Pullman Standard Division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.
- Item 2: The Equipment shall be settled for in not more than two Groups of units delivered to and accepted by NAC and the Vendee, unless a greater number shall be agreed to by the parties hereto.
- Item 3: (a) The Builder warrants to NAC, the Vendee, the Lessee and the Guarantor that the Equipment will be built in accordance with the Specifications and requirements set forth in Article 2 of this Agreement and warrants that the Equipment will be free from defects in material (except as to items or specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service. The Builder's obligation under this Item 3 is limited to making good at its factory any part or parts of any unit of Equipment which shall within one year after delivery of such unit of Equipment be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been defective; provided, however, that this warranty will be subject to the following limitations: (i) warranty coverage on running gear and contact points to unit structure is restricted to one year or 25,000 miles, whichever occurs first; and (ii) normal use and service is deemed to require inspection, adjustment, maintenance and compliance with the Builder's written instructions and any applicable Federal, state or local laws or regulations.

THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. The rights of NAC, the Vendee, the Lessee and the Guarantor under the foregoing warranty shall be their sole and exclusive remedy and the Builder will have no liability for lost profits or for indirect, incidental, consequential or commercial losses. This



warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder, except for its obligations and liabilities under Articles 2, 3, 4, 14 and 20 of this Agreement and Item 4 below. The Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees with NAC, the Vendee, the Lessee and the Guarantor that neither the inspections provided for in Article 3 of this Agreement nor any examination nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or a modification by NAC, the Vendee, the Lessee or the Guarantor of any of their rights under this Item 3.

- Item 4: Except in case of designs, processes or combinations specified by the Lessee and not developed by the Builder and articles and materials specified by the Lessee and not manufactured by the Builder, the Builder agrees to indemnify, protect and hold harmless the Lessee, the Guarantor, the Vendee and NAC from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Lessee, the Guarantor, NAC and the Vendee because of the use in or about the construction or operation of any unit of Equipment of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right. The Lessee, as a condition to its being a third-party beneficiary hereof, will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any unit of Equipment of any design, process or combination specified by the Lessee and not developed by the Builder or article or material specified by the Lessee and not manufactured by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder hereby transfers and assigns to the

Lessee every claim, right and cause of action (to the extent legally possible without impairing such claim, right or cause of action) which the Builder has or hereafter shall have against the originator or seller or sellers of any design, process, combination, article, or material specified by the Lessee and used by the Builder in or about the construction or operation of any unit of Equipment on the ground that any such design, process, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Builder further agrees to execute and deliver to the Lessee all and every such further assurances as may be reasonably requested by it more fully to effectuate the assignment and transfer of every such claim, right and cause of action. The Lessee, as a condition to its being a third-party beneficiary hereof, will give notice to the Builder of any claim known to the Lessee on the basis of which liability may be charged against the Builder hereunder.

Item 5: The Maximum Purchase Price referred to in Article 4 of the Agreement is \$16,423,611.

Annex B  
to the  
Conditional Sale Agreement

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100-Ton 4,750 cubic foot Covered Hopper Cars	L0	1072	Butler, Pa.	300	CAGX 700- CAGX 999	\$47,372	\$14,211,600	June 1980 at Butler, Pa.

ANNEX C  
to the  
Conditional Sale Agreement

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[CS&M Ref. 4876-023]

LEASE OF RAILROAD EQUIPMENT

Dated as of April 1, 1980

Between

MHC, INC.,  
Lessee,

CONAGRA, INC.,  
Guarantor,

and

CHEMICAL BANK,  
Lessor.

[Covering 300 4,750-cubic foot Covered Hopper Cars]

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# LEASE OF RAILROAD EQUIPMENT

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\* This Table of Contents has been provided for convenience only and does not affect any interpretation of this document.

LEASE OF RAILROAD EQUIPMENT dated as of April 1, 1980, between MHC, INC., an Oregon corporation (the "Lessee"), CONAGRA, INC., a Delaware Corporation (the "Guarantor"), and CHEMICAL BANK, a New York banking corporation (the "Lessor").

The Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with PULLMAN INCORPORATED (Pullman Standard Division) (the "Builder") and NORTH AMERICAN CAR CORPORATION ("NAC") wherein the Builder has agreed to manufacture, sell and deliver to NAC, and NAC has agreed to sell conditionally and deliver to the Lessor, the units of railroad equipment described in Appendix A hereto (the "Equipment").

NAC is assigning certain of its interests in the CSA pursuant to an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") to LA SALLE NATIONAL BANK, acting as agent (the "Vendor") for certain investors (the "Investors") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") between the Lessee, the Guarantor, the Vendor, the Lessor, NAC and the Investors.

The Lessee will lease such units of Equipment as are settled for under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided. The Lessor will assign this Lease as security to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment"), and the Lessee and the Guarantor will acknowledge and consent thereto pursuant to the Consent and Agreement substantially in the form attached to the Lease Assignment (the "Consent").

In consideration of the agreements hereinafter set forth, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

#### § 1. NET LEASE

This Lease is a net lease. Each of the Lessee's and the Guarantor's obligations to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, neither the Lessee nor the Guarantor shall be entitled to any abatement of rent or such other amounts, reduction thereof or setoff against

rent or such other amounts, including but not limited to abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee or the Guarantor against the Lessor under this Lease or the CSA or against the Builder, NAC or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate or the respective obligations of the Lessor or the Lessee or the Guarantor be otherwise affected by reason of any defect in or damage to or loss of possession or use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's or the Guarantor's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee or the Guarantor, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee and the Guarantor hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, each of the Lessee and the Guarantor hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee or the Guarantor hereunder shall be final and neither the Lessee nor the Guarantor shall seek to recover all or any part of such payment from the Lessor or the Vendor for any reason whatsoever.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Lessor has appointed the Lessee its agent for inspection and acceptance of the Units under the CSA. Each delivery of a Unit to the Lessor under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is so delivered to the Lessor. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Lessor under the CSA and on behalf of itself hereunder and execute and deliver to

the Lessor a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee, NAC and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

### § 3. RENTALS

3.1. Amount and Date of Payment. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, one interim rental payment on the Interim Payment Date (as defined in the CSA), and 240 consecutive monthly payments payable, in arrears, on the first day of each month, commencing on the first day of the month next succeeding the Interim Payment Date. In respect of each Unit subject to this Lease, (a) the interim rental payment shall be in an amount equal to 0.029372% of the Vendee Purchase Price (as defined in Section 4.1 of the CSA) of such Unit for each day elapsed from and including the Closing Date (as defined in Section 4.2 of the CSA) for such Unit to, but not including, the Interim Payment Date, and (b) the 240 monthly rental payments shall each be in an amount equal to 0.8117% of the Vendee Purchase Price of such Unit.

In addition to the foregoing, the Lessee agrees to pay to the Lessor as additional rental an amount equal to the amount of any deficiency to be paid by the Lessor pursuant to Paragraph 8 of the Participation Agreement, payable on the date or dates payable thereunder.

The Lessor and the Lessee agree that the rentals payable hereunder and the Casualty Value percentages set forth in Appendix B hereto will be adjusted in the event that the interest rate on the CSA Indebtedness determined in accordance with Section 4.5(b) of the CSA is not 10.75% per annum. Such adjustment will be made in such manner as will result, in the Lessor's judgment, in preserving the net after-tax rate of return and the net after-tax cash flow that would have been realized by the Lessor had such interest rate been 10.75% per annum. In such event, the Lessor and the Lessee agree that this Lease will be amended to reflect the changed rental rates and Casualty Values.



Anything in the foregoing provisions of this § 3.1 to the contrary notwithstanding, it is agreed that the aggregate of the rental payable pursuant to this § 3.1 on each rental payment date shall in no event be less than the principal and/or interest payment due on each such date pursuant to Article 4 of the CSA.

3.2. Payment on Nonbusiness Day. If any rental payment date referred to in § 3.1 is not a business day, the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized or obligated to remain closed.

3.3. Instructions To Pay Assignee. Upon execution and delivery of any lease assignment in writing and until the Lessee shall have been otherwise advised in writing, the Lessee shall pay all amounts so assigned in accordance with the instructions of any assignee.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

#### § 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of acceptance thereof pursuant to § 2 hereof and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of the Lessee and the Guarantor hereunder (including but not limited to the obligations under §§ 6, 7, 10, 11, 12 and 17 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee and Guarantor Subject to CSA. All rights and obligations of the Lessee and the Guarantor under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term.

## § 5. IDENTIFICATION MARKS

5.1. Identifying Numbers; Legend; Changes. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Appendix A hereto or, in the case of any Unit not there listed, such identification number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on each side thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and in all public offices where this Lease and the CSA shall have been filed and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed, such filing will protect the Vendor's and the Lessor's interests in such Units and no filing with or giving of notice to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Lessor in such Units.

5.2. Insignia of Lessee. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

## § 6. GENERAL TAX INDEMNIFICATION

Whether or not the transactions contemplated hereby are consummated, the Lessee assumes responsibility for and agrees to pay and agrees to hold harmless and indemnify on a net after-tax basis the Lessor and the Vendor and their successors and assigns (the "Indemnified Persons") against all taxes, additions to tax, assessments, fees, withholdings and other governmental charges (including those asserted or imposed by

any foreign government or subdivision thereof) of any nature whatsoever, including, without limitation, penalties, fines and interest (all such taxes, additions to tax, assessments, fees, withholdings, governmental charges, penalties, fines and interest are called "Taxes"), in any manner imposed on, incurred by or asserted against any Indemnified Person or any Unit in whole or in part on account of or with respect to this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acceptance or rejection of the Units or any portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, transfer of title, operation, maintenance, repair, condition, sale, return or other disposition of the Units or any portion thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for any Taxes imposed on or measured solely by the net income or excess profits of the Lessor or the Vendor, other than Taxes arising out of or imposed with respect to the receipt of indemnification payments pursuant to this Lease. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within ten days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question, subject to the rights of the Lessee to contest any Taxes in accordance with the sixth paragraph of this § 6.

In the event that the Lessor shall become obligated to make any payment to the Builder, NAC or the Vendor or otherwise pursuant to any corresponding provision of the CSA not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in such Units.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in the name of the Lessor and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities, including without limitation reason-

able counsel fees and expenses, incurred in connection therewith as a result of or incident to any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit its compliance with the requirements of taxing jurisdictions.

If any taxing authority shall assert liability for any Taxes or propose an increase in the liability of any Indemnified Person for any such Taxes (such assertion or such proposed increase is called a "Claim"), indemnification for which would be required under this § 6, the Indemnified Person will notify the Lessee in writing within a reasonable time of such Claim. If the Lessee delivers to such Indemnified Person written notice of its desire to contest such Claim within 30 days after receipt of notice from such Indemnified Person, such Claim will be contested in accordance with this paragraph, except to the extent such Claim represents amounts payable to the Vendor under Article 6 of the CSA. The Lessor will permit the Lessee to contest such claims under Article 6 of the CSA in accordance with the rights of the Lessor thereunder. The Indemnified Person shall have the exclusive right to conduct the contest unless such is waived in writing, in which event the contest and all preparations therefor shall be the sole responsibility of the Lessee and, in either case, shall be conducted entirely at its expense. Such Indemnified Person will cooperate with any reasonable request made by the Lessee in connection therewith; provided, however, that such Indemnified Person may in its sole discretion determine in what court or other forum such contest will be conducted and whether such contest will proceed by payment of the Taxes in contemplation of a suit for refund, and such Indemnified Person shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify such Indemnified Person in a manner satisfactory to such Indemnified Person for any liability or loss which such Indemnified Person may incur as a result of contesting the validity of any Claim and shall have agreed to pay such Indemnified Person on demand all costs and expenses which such Indemnified Person may incur in connection with contesting such Claim (including but not limited to fees and disbursements of counsel). If in any such contest the decision is made to pay the Taxes and sue for a refund, the Lessee

will advance to such Indemnified Person on an interest-free basis sufficient funds to pay the Taxes which are to be contested. Upon receipt by any Indemnified Person of a refund of any Taxes paid by the Lessee pursuant to this paragraph, the amount of such refund and any interest paid to such Indemnified Person with respect thereto shall be paid to the Lessee forthwith upon receipt by such Indemnified Person, less the amount of any tax detriment to such Indemnified Person attributable to such refund or interest.

The Lessee covenants and agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder.

In the event that the Lessee becomes liable for the payment or reimbursement of any Taxes pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such Taxes are paid or reimbursed by the Lessee.

## § 7. PAYMENT FOR CASUALTY OCCURRENCES AND INSURANCE

### 7.1. Definitions of Casualty Occurrence; Payments.

In the event that any Unit shall be or become lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to § 14 or 17 hereof or the purchase price of any Unit shall have been refunded by the Builder pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or by any other governmental entity (including any foreign government or subdivision thereof) resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of this Lease or during any renewal term hereof (a "Casualty Occurrence"), the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the next succeeding monthly rental payment date (a "Casualty Payment Date"), the Lessee shall pay to the Lessor a sum equal to the Casualty Value (as defined in § 7.4 hereof) of

any such Unit as of such Casualty Payment Date, plus the rental in respect of such Unit accrued as of such rental payment date; provided, however, that in the event of a Casualty Occurrence during the period any Unit is being returned pursuant to § 14 or 17 hereof, the Lessee shall make such Casualty Value payment and accrued rental payment, if any, to the Lessor on a date 30 days after such Casualty Occurrence. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity (including any foreign government or subdivision thereof) and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the term of this Lease, in which event the Lessee shall promptly and fully notify the Lessor with respect thereto and pay the Lessor, as the Casualty Value therefor, an amount equal to the Casualty Value as of the end of the term of the Lease in which the Casualty Occurrence shall have taken place. Following such payment, provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value plus the Lessee's costs in such proceedings and any balance of such payments shall be the property of the Lessor. In the event such Unit shall be returned by the governmental entity, such Unit shall be returned by the Lessee to the Lessor in the manner provided in § 17 hereof. If the Lessor shall elect to retain such Unit, the Lessee shall be entitled to immediate payment of the amount of the Casualty Value paid by the Lessee plus the Lessee's costs in such proceedings less any condemnation payments received by the Lessee; and if the Lessor shall elect to sell such Unit, the Lessor shall cause such Unit to be sold, and the Lessee shall be entitled to the proceeds of such sale up to the amount of the Casualty Value paid by the Lessee plus the Lessee's costs in such proceedings less any condemnation payments received by the Lessee.

7.2. Requisition by United States Government. In the event of the requisition for use by the United States

Government of any Unit for a period which does not exceed the term of this Lease or for an indefinite period (except where deemed a Casualty Occurrence pursuant to the last paragraph of § 7.1 hereof), all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Lessor or the Lessee from the United States Government for the use of such Unit during the term of this Lease shall be paid over to or retained by the Lessee provided no Event of Default (or other event which with notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

7.3. Lessee Agent for Disposal. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of the Lease at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, and provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

7.4. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Vendee Purchase Price of such Unit as is set forth in Annex B hereto opposite the rental payment date next succeeding the actual date of such Casualty Occurrence or, if there is no such rental payment date, the last rental payment date; but in no event shall such amount be less than the Casualty Value (as defined in Section 7.3 of the CSA) as of such rental payment date.

7.5. No Release. Except as provided in this § 7, the Lessee shall not be released from its obligations hereunder in the event of any Casualty Occurrence and shall bear the risk of any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.6. Insurance To Be Maintained. (1) The Lessee will at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained public liability insurance (providing coverage of not less than \$50,000,000 for one occurrence) with respect to third party personal injury and property damage and property insur-

ance in respect of the Units at the time subject hereto, in either case with a maximum deductible amount of not more than \$250,000. The Lessee will carry such insurance in such amounts, for such risks, with such deductibles and with such insurance companies as are satisfactory to the Lessor and the Vendor and in any event consistent with prudent industry practice and at least comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units. The proceeds of any such insurance shall be payable to the Vendor, the Lessor and the Lessee, as their respective interests may appear, so long as the indebtedness, if any, evidenced by the CSA shall not have been paid in full, and thereafter to the Lessor and, so long as there is no Event of Default hereunder, the Lessee as their respective interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation or material change in coverage to the Lessor and the Vendor, (ii) name the Lessor and the Vendor as additional named insureds and as loss payees as their respective interests may appear, (iii) waive any right to claim any premiums or commissions against the Lessor and the Vendor and (iv) not be a part of an umbrella policy containing any aggregate coverage limitations. In the event such policies shall contain breach of warranty provisions, such policies shall provide that in respect of the interests of the Lessor and the Vendor in such policies the insurance shall not require contributions from other policies held by the Lessor or the Vendor and shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor and the Vendor, respectively) and shall insure the Lessor and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Lessor or the Vendor, respectively). At least five days prior to the first date of delivery of any Unit pursuant to the CSA, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this § 7, the Lessee shall deliver to the Lessor and the Vendor certificates issued by the insurer(s) for the insurance maintained pursuant to this § 7; provided, however, that if the delivery of any certificate is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the certificate upon receipt thereof.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall,



upon demand from time to time, reimburse the Lessor for the cost thereof on demand together with interest thereon at the rate per annum specified in § 19 hereof.

7.7. Insurance Proceeds and Condemnation Payments.

If the Lessor shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence and provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing and the Lessee shall have made payment of accrued rentals in respect of such Units to the Lessor, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to any Unit theretofore paid by the Lessee and any balance of such proceeds or payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor (directly or from the Vendor) in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired by the Lessee.

§ 8. REPORTS

On or before March 31 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Lessor and the Vendor an accurate statement setting forth (a) as at the preceding December 31 the total number, description and identification numbers of all Units then leased hereunder and covered by the CSA and of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repairs (other than running repairs), and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, (b) in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5.1 hereof have been preserved or replaced and (c) that the Lessee is in compliance under this Lease and has performed or has caused to be performed the required maintenance of the Units and that no event has occurred which with notice or lapse of time or both would constitute an Event of Default. The Lessor and the Vendor shall each have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Vendor may request during the continuance of this Lease.

## § 9. DISCLAIMER OF WARRANTIES

THE LESSOR DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder or NAC under the provisions of Items 3 and 4 of Annex A of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce such claims and rights at the Lessee's sole cost and expense. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor or the Vendor based on any of the foregoing matters.

## § 10. APPLICABLE LAWS

10.1. Compliance. The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation the use, maintenance and operation of each Unit) with all laws of the jurisdictions

in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units (all such laws and rules to such extent are called "Applicable Laws"), and in the event that any Applicable Law requires any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA.

10.2. Reports by Lessor. The Lessee agrees to prepare and deliver to the Lessor and the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor and the Vendor) any and all reports (other than income tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee. No such report shall set forth information which is inconsistent with the ownership of the Units by the Lessor or which implies that this Lease is not a true lease.

## § 11. MAINTENANCE

11.1. Units in Good Operating Order. The Lessee at its own cost and expense will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the Applicable Laws and in the same condition as other similar Equipment owned or leased by the Lessee, which will conform to any conditions set forth in the Builder's and NAC's warranties.

11.2. Additions and Accessions. (1) Except as set forth in §§ 10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the

term of this Lease as are readily removable without causing material damage to the Units (and do not adversely affect the value of the Units), which additions, modifications and improvements shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with § 11.2(3) hereof.

(2) Except as set forth in §§ 10.1 and 11.1 hereof, the Lessee will not make any addition, modification or improvement to any Unit which would not be readily removable without causing material damage to such Unit (other than Unit lining) without the prior written consent of the Lessor.

(3) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, (ii) the cost of which is included in the Vendee Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit in railroad interchange by the Applicable Laws shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except those created by the CSA) shall immediately be vested in the Lessor and the Vendor as their respective interests may appear in the Unit.

## § 12. INDEMNIFICATION

12.1. Indemnified Persons. The Lessee shall pay and shall protect, indemnify and hold the Lessor, the Vendor and their respective successors, assigns, agents and servants (the "Indemnified Persons") harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements or expenses relating thereto, including without limitation attorneys' fees and expenses of any Indemnified Person) in any way relating to or arising or alleged to arise out of this Lease, the CSA or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent and other defects whether or not discoverable by the Indemnified Person or the Lessee; (iii) any claim for patent or trademark infringement; (iv) any claims based on strict

liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner arising out of or alleged to arise out of the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Indemnified Person, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation or alleged violation of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, except to the extent any such violation arises from the gross negligence or wilful misconduct of the Lessor; or (vii) any claim arising out of any of the Lessor's obligations under the Lease Assignment or the Vendor's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement (all such matters are called "Indemnified Matters"), except to the extent such claim arises from the gross negligence or wilful misconduct of the Lessor. The Lessee shall be obligated under this § 12.1, whether or not any Indemnified Person shall also be indemnified with respect to any Indemnified Matter under any other agreement by any other person, and the Indemnified Person may proceed directly against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any indemnification payment under this § 12.1, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States of America or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against and of any other such taxes as determined in the sole discretion of the Indemnified Person),

shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 12 by the Lessee, and provided that no Event of Default (or other event which with notice or lapse of time or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of such Indemnified Matter. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any Indemnified Matter shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made and any costs incurred by the Lessee in defending such Indemnified Person. Nothing in this § 12.1 shall constitute a guarantee by the Lessee of the CSA Indebtedness of the Lessor under the CSA or a guarantee of the residual value of any Unit.

12.2. Indemnification of NAC and Builder. The Lessee further agrees to indemnify, protect and hold harmless NAC and the Builder as third-party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against NAC or the Builder because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by NAC or the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed by NAC or the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to NAC or the Builder of any claim known to the Lessee from which liability may be charged against it hereunder.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

## § 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event is called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in (1) § 3 hereof and such default shall continue for five days or (2) § 7 or 17 hereof and such default shall continue for five days;

(B) the Lessee or the Guarantor shall make or permit any unauthorized assignment or transfer of this Lease or any interest herein or of the right to possession of any Unit;

(C) default shall be made in the observance or performance of any other covenant, condition or agreement on the part of the Lessee or the Guarantor contained herein, in the Participation Agreement or the Consent and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee or the Guarantor herein or in the Participation Agreement or in any certificate or statement furnished to the Lessor pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee and the Guarantor under this Lease and the Consent shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed pursuant to a court order or decree by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as

expenses of administration and obligations incurred by such trustee or trustees; or

(F) any other proceedings shall be commenced by or against the Lessee or the Guarantor for any relief which includes or might result in any modification of the obligations of the Lessee or the Guarantor hereunder under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced pursuant to a court order or decree by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or the Guarantor or for its respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee or the Guarantor of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee and the Guarantor to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee and the Guarantor shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises (insofar as the Lessee or the Guarantor may be lawfully authorized to so permit) where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of



such Units and possess and use the same free from any right of the Lessee or the Guarantor to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period), to recover any damages and expenses, including without limitation reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of this Lease and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion shall specify, (i) the excess of the present value at the time of such termination of the entire unpaid balance of all rentals for each Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Unit during such period (such present value to be computed in each case on the basis of a 6% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated) or, if such Unit is sold, the net proceeds of the sale or (ii) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the net proceeds of the sale of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessee shall, if the Lessor shall so elect, pay the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale in lieu of paying any amounts pursuant to the preceding clause (ii) with respect to such Unit.

13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Lessor shall not

be deemed exclusive but shall be cumulative and may be exercised concurrently or consecutively and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee and the Guarantor hereby waive any mandatory requirements of law now or hereafter in effect which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee and the Guarantor hereby waive any and all existing or future claims to any offset against the rental payments due hereunder and agree to make such payments regardless of any offset or claim which may be asserted by the Lessee or the Guarantor or on behalf of either.

13.3. Failure To Exercise Rights Is Not Waiver. The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. Notice of Event of Default. The Lessee and the Guarantor agree to furnish the Lessor and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which after notice or lapse of time or both would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. A "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee or the Guarantor contained in this Lease, any corporate officer of the Lessee or the Guarantor who in the normal performance of such officer's operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

#### § 14. RETURN OF UNITS UPON DEFAULT

14.1. Return of Units. If this Lease shall terminate pursuant to § 13 hereof or Article 16 of the CSA, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 11 and shall

have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 11, is owned by the Lessee or, if Lessee wishes not to remove the same and if the Lessor consents thereto, the same will remain affixed to such Unit and title thereto will immediately vest in the Lessor at no cost or expense to the Lessor. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall, at its own cost, expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon such storage tracks as the Lessor reasonably may designate;

(b) cause such Units to be stored on such tracks at the risk of the Lessee without charge to the Lessor for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) cause the same to be transported to any reasonable place as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

14.2. Lessor Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 14, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the

Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be in possession of such Unit at the time.

§ 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Lessor upon prior written consent of the Vendor, except that without such consent the rights of the Lessor hereunder shall be assignable to any Affiliate of the Lessor (without relieving the Lessor of its obligations hereunder) or to any bank, trust company, financing company or other financial institution having a combined capital and surplus of at least \$50,000,000 and except that the rights of the Lessor hereunder shall be assignable to any other party so long as the Lessor shall remain primarily liable for its obligations hereunder and shall, at the time of such assignment, agree in writing in a manner reasonably satisfactory to the Vendor, the Lessee, the Guarantor and any assignee hereof to indemnify such parties and to hold such parties harmless from and against, any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against such parties resulting from, arising out of or in connection with such assignment. For the purpose of this § 15, "Affiliate" shall mean any corporation which directly or indirectly controls, is controlled by or is under common control with, the party in question, and "control" as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use, Assign and Sublease Units. So long as no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) exists hereunder, the Lessee is complying with the provisions of the Consent and the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment:

(a) The Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA. The Lessee shall not assign or transfer its leasehold interest under this Lease in any Units without

the prior written consent of the Lessor and the Vendor, except as provided in subsection (b) of this § 15.2; and the Lessee shall not part with the possession or control of any Unit or allow any Unit to pass out of its possession or control without the prior written consent of the Lessor and the Vendor, except as provided in said subsection (b). The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which if unpaid might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(b) The Lessee shall be entitled to the possession and use of the Units by it or any Affiliate upon lines of railroad owned or operated by it or any such Affiliate or upon lines of railroad over which the Lessee or any such Affiliate has trackage or other operating rights or over which any of their railroad equipment is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements. The Lessee may sublease the Units without the consent of the Lessor, but only upon and subject to all the terms and conditions of this Lease and the CSA, to any financially responsible entity for a period of up to two years; provided, however, that (i) a copy of each such sublease shall be furnished to the Lessor prior to its effective date, (ii) the Lessee and the Guarantor shall remain primarily liable for all payments due and obligations to be fulfilled hereunder and (iii) each such sublease shall contain words to the following effect:

"The rights of the sublessee under this sublease are subordinate and junior to the rights and remedies of Chemical Bank (the "Lessor") under a Lease of Railroad Equipment (the "Lease") dated as of April 1, 1980, between MHC, Inc., ConAgra, Inc., and the Lessor and to the rights of La Salle National Bank under the Conditional Sale Agreement referred to in the Lease";

provided further, however, that the Lessee shall not sublease or permit the use of any Unit predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee sublease to or permit the use of

the Units by any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. The Lessee may sublease the Units for a longer period of time with the consent of the Lessor, which consent shall not be unreasonably withheld. The Lessee may receive and retain compensation for the use of any of the Units from railroads or other entities so using such Units.

15.3 Transfers by Lessee Through Merger, Acquisition or Consolidation. Nothing in this § 15 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

#### § 16. RENEWAL OPTION

16.1. Renewal Option. The parties hereto contemplate that at the end of the original term of this Lease, the Lessor will hold the Units for re-lease. Prior to the delivery of any Unit pursuant to § 2 hereof, the Lessor will enter into an agreement (the "Option Agreement") with Tiger Financial Services, Inc. ("TFS"), pursuant to which the Lessor will grant to TFS the option to lease all but not less than all of the Units then subject to this Lease for one five-year term commencing at the end of the original term of this Lease on such terms as are set forth in the Option Agreement. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, if TFS shall fail to exercise its option to lease the Units at the end of the original term of this Lease, the Lessee may, by written notice delivered to the Lessor not less than 180 days nor more than 270 days prior to the end of the original term of this Lease, elect to extend such original term of this Lease in respect of all but not less than all the Units then covered by this Lease for one five-year term or such other time acceptable to both the Lessee and Lessor commencing on the scheduled expiration of such original term of this Lease, at Fair Market Rental (as defined in § 16.2 hereof) payable, in arrears, in monthly payments on the day such rentals were

payable for the Units in each year of such original term. In the event of any such renewal, the Casualty Value payable in respect of a Casualty Occurrence involving any Unit shall be as set forth in Appendix B hereto.

16.2. Determination of Fair Market Rental.

(1) Fair Market Rental shall be determined for the extended term of this Lease on the basis of and shall be equal in amount to the rental which would be obtained in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental.

(2) If, after 50 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, either party to such determination may give written notice to the other requesting determination of such value by an appraisal procedure and the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the

American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof. The expenses of the appraisal procedure shall be borne by the Lessee.

#### § 17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, and in any event not later than 90 days thereafter, the Lessee will, at its own cost and expense, deliver possession of such Unit to the Lessor upon such storage tracks as the Lessor may reasonably designate or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months from the date of delivery of the last such Unit and transport the same upon disposition of the Units, at any time within such three-month period, to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to or the death of any person exercising the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards of the Applicable Laws then in effect and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession or, if Lessee wishes not to remove the same and if the Lessor consents thereto, the same will remain affixed to such Unit and title thereto will immediately vest in the Lessor at no cost or expense to the Lessor. During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. The assembling, delivery, storage and trans-



porting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. If any Unit is not so delivered in the condition required to be delivered under this § 17 within 30 days after the expiration of the original or any extended term of this Lease, the Lessee shall pay to the Lessor for each day thereafter until such Unit is so delivered an additional amount equal to the higher of the daily interchange rate for that interchange or 0.022239% of the Vendee Purchase Price of such Unit per day.

#### § 18. FILING

The Lessee, at its own expense, will cause this Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will undertake the filing required of the Lessor under the CSA. The Lessee in addition will from time to time perform any other act and will execute, deliver and file (and will refile whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of their respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease, the CSA, the CSA Assignment and the Lease Assignment shall be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery and acceptance hereunder of any Unit.

#### § 19. INTEREST ON OVERDUE AMOUNTS

The Lessee shall promptly pay an amount equal to interest at the higher of 11.75% per annum or 2% above the prime rate of Chemical Bank from time to time in effect (the "Penalty Rate") on any overdue rentals or other amounts due under this Lease for the period of time during which they are overdue, or such lesser amount as may be legally enforceable.

## § 20. LESSOR'S RIGHT TO PERFORM FOR LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the Penalty Rate shall be payable by the Lessee upon demand, except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder.

## § 21. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessee or the Guarantor, at the offices of the Guarantor at 200 Kiewit Plaza, Omaha, Nebraska 68131, attention of Vice President of Transportation, with a copy to the Corporate Secretary at the same address;

(b) if to the Lessor, at 55 Water Street (Suite 1822), New York, New York 10087, attention of Manager, Specialized Leasing Group, with a copy to Richard H. Gilden, Esq., Messrs. Rosenman Colin Freund Lewis & Cohen, 575 Madison Avenue, New York, N. Y. 10022;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at 135 South LaSalle Street, Chicago, Illinois 60690, attention of Corporate Trust Department.

## § 22. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability

in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### § 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement and the Consent, this Lease exclusively and completely states the rights of the Lessor, the Lessee and the Guarantor with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor, the Lessee and the Guarantor.

#### § 24. THIRD-PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Vendor, the Investors, NAC, the Builder and the permitted successors and assigns of such parties) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

#### § 25. EXECUTION

This Lease may be executed in several counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original. Although for convenience this Lease is dated as of the date first set forth above, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto.

#### § 26. GOVERNING LAW

This Lease shall be governed by and construed in accordance with the laws of the State of Nebraska, except that the rights and obligations of the parties under § 30 hereof shall be governed by and construed in accordance with the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

## § 27. IMMUNITIES; NO RECOURSE

No recourse shall be had in respect of any obligation due under this Lease or referred to herein against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

## § 28. AGREEMENTS FOR BENEFIT OF LESSOR'S ASSIGNS

All rights of the Lessor hereunder (including but not limited to its rights under §§ 6, 7, 9, 12, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the Vendor).

## § 29. TERM LESSOR

Whenever the term Lessor is used in this Lease it shall apply and refer to the Lessor and any assignee of the Lessor including, so long as any CSA Indebtedness under the CSA or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Vendor.

## § 30. TAXES

30.1. Tax Assumptions. It is the intent of the Lessor and Lessee that this Lease will be recognized as a lease for all Federal, state, city and local income taxes or franchise taxes and that this Lease does not convey to the Lessee any right, title or interest in the Units except as lessee and that for United States income tax purposes (and to the extent applicable for state and local tax purposes) the Lessor will be treated as the beneficial owner of the Units purchased by it and shall be entitled to such deductions and other benefits (other than the investment tax credit attributable to the Equipment) as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), to an owner of new property including (without limitation) (a) the depreciation deduction with respect to the Units employing a

useful life of 12 years pursuant to the Asset Depreciation Range, Asset Guideline Class 00.25 based on an amount at least equal to the Vendee Purchase Price of the Units to the Lessor employing the double-declining-balance method, changing when most beneficial to the Lessor to the sum-of-the-years-digits method, and a salvage value of zero (the "Depreciation Deduction") and (b) deductions with respect to interest payable in connection with the CSA Indebtedness incurred under the CSA pursuant to Section 163 of the Code (the "Interest Deduction"). Nothing herein shall preclude the Lessor from claiming any deductions or other benefits (other than the investment tax credit attributable to the Equipment) as provided in the Code in a manner other than as set forth in this § 30.1; provided, however, that the Lessee's obligations under this section shall in all cases be based solely on the assumptions with respect to the Depreciation Deduction and Interest Deduction set forth in this § 30.1.

30.2. Lessee's Tax Agreements and Representations.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Lessor over the amount specified to be payable under this Lease on the dates due hereunder, except as specifically provided in this Lease, and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor such records as will enable the Lessor to determine the extent to which it is entitled to the benefit of the Depreciation Deduction with respect to the Units.

The Lessee represents, covenants and warrants that (i) at the time the Lessor becomes the owner for tax purposes of any Units, such Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 167(c)(2) of the Code from commencing with the Lessor; (ii) the Lessor will be entitled to treat each item of income and deduction arising out of or with respect to the acquisition and lease of the Equipment as derived from sources within the United States of America, (iii) none of the Units will be "used predominantly outside the United States" within the meaning of Section 48(a)(2) of the Code during any calendar year; (iv) the Lessee will

maintain sufficient records to verify the use set forth in the foregoing clauses (i), (ii) and (iii), which records will be retained for at least six years (or such longer period as is reasonably requested by Lessor) and be furnished to the Lessor as soon as possible, but in any event, within 30 days after receipt of a written demand therefor; (v) all of the Units constitute property which qualifies for the Depreciation Deduction, the basis of such Units in the hands of the Vendee will not be less than the Vendee Purchase Price and, during the term of the Lease, all such Units will constitute such property; (vi) the Equipment will be "placed in service" prior to December 31, 1980; and (vii) it is the belief of the Lessee that the independent appraisal delivered to the Lessor in connection with the acquisition of the Equipment is reasonable and the facts and assumptions contained therein are correct.

30.3. Indemnification. (a) If by reason of any act, omission or misrepresentation of the Lessee (including but not limited to the inaccuracy in law or in fact of the representations, warranties and covenants set forth in § 30.2 hereof or the failure of the Lessee to furnish the notice to the Lessor contemplated by § 30.9 hereof or any inaccuracy in such notice) or due to a change in the Code or Regulations occurring on or prior to the date of acceptance of any of the Units under the Lease or a change in the Code or Regulations which shall become effective on or prior to such date, the Lessor shall not be entitled to, or shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of, or shall be required to recapture all or any portion of, the Depreciation Deduction or the Interest Deduction with respect to all or part of any Unit or the Lessor shall not be entitled to treat each item of income and deduction as being derived from sources within the United States (any such loss, disallowance, recapture or treatment called the "Loss"), then, the Lessee shall, beginning with the next succeeding rental payment date after written notice is given to the Lessee by the Lessor of such fact, and on each succeeding rental payment date, pay to the Lessor, pursuant to this section, such amount or amounts as shall, in the reasonable opinion of Lessor, cause the net after-tax rate of return and net after-tax cash flow of the Lessor to at least equal the net after-tax rate of return and net after-tax cash flow that would have been realized by the Lessor if such Loss had not occurred (which it is understood includes giving effect to any Federal, state or local income or franchise taxes required to be paid by Lessor with respect to the receipt of payments made by the Lessee to the Lessor pursuant to the operation of this paragraph) and the Lessee shall forthwith

pay to the Lessor the amount which, when reduced by any increase in the Lessor's tax liability or liabilities resulting from the Lessor's receipt of such amount will equal the amount of any interest, additions to tax and/or penalties which may be assessed by the United States of America or any state or local taxing authority against Lessor attributable to such Loss.

For the calculation of the net after-tax rate of return and net after-tax cash flow to the Lessor, a combined Federal, state and local income tax rate of 59.05% shall be assumed.

(b) Payment shall not be required to be made by the Lessee to the extent that the Lessor shall have suffered such Loss with respect to all or part of such Unit solely as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Unit unless an Event of Default shall have occurred and be continuing hereunder;

(iii) the failure of the Lessor to claim in a timely or proper manner the Depreciation Deduction or the Interest Deduction, unless the Lessor shall have received an opinion of an independent tax counsel reasonably satisfactory to the Lessee to the effect that the Lessor is not entitled to claim the Depreciation Deduction or the Interest Deduction; or

(iv) a change in the Code enacted after the delivery of the Units.

30.4. Change in Law. If the deductions or other benefits to which the Lessor is entitled are increased or decreased by a change in law (other than a change in income tax rates) that is effective prior to the acceptance of the Units by the Lessor which are affected by the change, the rental and Casualty Value hereunder shall be reasonably adjusted by the Lessor so that the net after-tax rate of return and net after-tax cash flow of the Lessor shall not be increased or decreased by reason of such change; provided,

however, that any decreases of the rental or Casualty Value pursuant to this section shall not cause such items to be less than the amounts required to satisfy the CSA Indebtedness and any interest thereon.

30.5. Change in Casualty Values. In the event that increased rental payments are required of the Lessee under this Section, the Casualty Values shall be increased or decreased accordingly for the purposes of this section and; upon the subsequent occurrence of a Casualty Occurrence, the Lessee shall pay under this section any increase or decrease in such Casualty Values, as the case may be, at the same time as the payment of Casualty Value is due to be paid to the Lessor by the Lessee under this Lease as a result of such Casualty Occurrence; provided that in no event shall such Casualty Values be reduced below the amount required to be paid by the Lessor under the CSA in the event of a Casualty Occurrence.

30.6. Tax Claim. If a claim shall be made by the Internal Revenue Service (the "Service"), with respect to the income tax liability of the Lessor attributable to its investment in the Units which, if successful, would lead to increased rental payments by the Lessee hereunder, the Lessor shall give prompt notice of such claim to the Lessee and the Lessor shall take such action to contest such claim as the Lessee shall reasonably request in writing from time to time, provided that within eight days after Lessee's actual receipt of said notice by the Lessor of such proposed or probable adjustment the Lessee shall request that such adjustment be contested; and further provided that an Event of Default shall not be continuing hereunder and the Lessee shall not have failed to make any payments when due under this section. For purposes of this section, "prompt notice" shall mean written notice to the Lessee by the later to occur of (a) 15 days after receipt of such notice by Lessor from the Service or (b) such time as would permit a contest of any claim made by the Service. The Lessor may, in its discretion, forego any administrative appeal with the Service in respect of such claim and may, at its option, either pay the tax claimed and sue for refund in the appropriate United States District Court or in the United States Court of Claims, as it may elect, or contest such claim in the United States Tax Court, considering, however, in good faith such request as the Lessee may make concerning the most appropriate forum in which to proceed; provided, however, that the final decision as to selection of the forum shall be solely that of the



Lessor. If the Lessor pays the tax claimed and sues for refund, payments by the Lessee shall be required so as to maintain the net after-tax rate of return and net after-tax cash flow of the Lessor in the manner and to the extent provided in this section, and, in addition to its obligations under § 30.3 hereof, the Lessee shall forthwith pay to the Lessor the amount which, when reduced by any increase in the Lessor's tax liability or liabilities resulting from the Lessor's receipt of such amount, will equal the amount of any interest, additions to tax and/or penalty assessed against the Lessor with respect to such additional income tax. If the Lessor receives a refund as a result of contesting such claim and the rental under the Lease shall have previously been adjusted or any payment shall previously have been made by the Lessee as a result of the Loss which was the subject of such contest, the Lessor shall forthwith pay to the Lessee any interest on the refund paid by the taxing jurisdiction net of any tax detriment to the Lessor attributable to the receipt of such interest together with the appropriate amount with respect to any interest and/or penalty payments which should not have been assessed against and paid by the Lessee to the Lessor pursuant to the preceding sentence, and the payments of the Lessee with respect to such claim shall, beginning with the next rental payment due after receipt by the Lessor of such refund, be decreased to such amount or amounts as shall, in the reasonable opinion of the Lessor, cause the net after-tax rate of return and net after-tax cash flow of the Lessor over the term of the Lease to at least equal the net after-tax rate of return and net after-tax cash flow that would have been realized by the Lessor if additional income taxes of the Lessor in the amount refunded had not been paid, but in no event shall such rentals be reduced below the amounts required to satisfy the obligations of the Lessor under the CSA. Any such contest shall be at the sole expense of the Lessee and the Lessee agrees to pay to the Lessor on demand any reasonable expense attributable to the contest with respect to the Equipment to be incurred by the Lessor in connection with such contest; and the Lessor shall have no obligation to continue such contest in the event the Lessee fails to make such payment within 10 days after actual receipt of written demand.

30.7. Survival. The agreements to pay any sums which may become payable pursuant to this section shall survive the expiration or other termination of this Lease or the Lessee's interest herein; and the Lessee's obligations hereunder shall be assumed by the assignee if this Lease shall be assigned by the Lessee as provided in Section 15.2 hereof.

30.8. Capital Expenditures. In the event and to the extent that the cost of any improvements and/or additions ("Capital Expenditures") to a Unit made by the Lessee, under and pursuant to the terms hereof or otherwise, is required to be included in the gross income of the Lessor for Federal, state or local income or franchise tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the Lessee shall, beginning with the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice thereof to the Lessor pursuant to § 30.9 hereof after said inclusion in the gross income of the Lessor is required, and on each succeeding rental payment date, pay to the Lessor such amount or amounts as shall, in the reasonable opinion of the Lessor, cause the net after-tax rate of return and net after-tax cash flow of the Lessor to at least equal the net after-tax rate of return and net after-tax cash flow that would have been realized by it if the cost of such Capital Expenditures had not been includible in its gross income; provided that the Lessee shall not be required to make any such payments unless the Lessor agrees in writing to contest such inclusion if requested in writing by the Lessee and as provided in § 30.6 and 30.10 hereof.

For the purposes of this section the cost of Capital Expenditures made by the Lessee shall be deemed to be "required to be included in the gross income of the Lessor for Federal, state or local income tax purposes" if such inclusion is required by any provision of the Code, any applicable regulations enacted or adopted thereunder, any published revenue ruling of the Service which has not been held invalid by a court having appellate jurisdiction over the Federal income tax liability of the Lessor in a decision which has become final, or an assessment or proposed adjustment by the Service with respect to such amounts.

The Lessee agrees to make a payment to the Lessor for any interest, additions to tax and/or penalties resulting from the failure to include the cost of Capital Expenditures in its income tax return, such payment to be made upon demand in an amount, when reduced by any increase in the Lessor's tax liability resulting from Lessor's receipt of such payment, sufficient to restore the Lessor to the same position it would have been in had such interest, additions to tax and/or penalties not been imposed; and such amount shall be determined in the reasonable opinion of the Lessor.

30.9. Notices of Capital Expenditures. The Lessee agrees that, within 30 days after the close of Lessor's

fiscal year in which the Lessee has made Capital Expenditures which are of a type or which the Lessee believes are of a type, or are of a type which the Lessee has been advised by the Lessor may be of a type, required to be included in the gross income of the Lessor for Federal, state or local income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Lessor describing such Capital Expenditures in reasonable detail and specifying the cost thereof with respect to each Unit.

30.10. Contest by Lessor. Notwithstanding any provision in this Section to the contrary, the Lessor shall not be required to contest in a judicial proceeding any disallowance or proposed disallowance by the Service with respect to the Depreciation Deduction or the Interest Deduction of the Lessor or the includibility of the cost of any Capital Expenditure in the gross income of the Lessor unless the Lessor shall have received an opinion from independent tax counsel selected by the Lessor and accepted by the Lessee (which consent shall not be unreasonably withheld) that there is a reasonable basis for contesting such liability, inclusion or other matters.

30.11. Disagreement by Parties. In the event of disagreement between the parties as to the amount of any payment due under this Section, the parties agree to submit the calculation of such payments to one of the eight largest public accounting firms in the United States of America, chosen by mutual agreement, or to Price Waterhouse & Co., and such firm shall perform the calculation which will be binding on both parties. Costs incurred by either party in respect to such submission shall be borne equally by the Lessor and the Lessee.

### § 31. GUARANTEE OF GUARANTOR

In consideration of inducing the Lessor to enter into this Lease, the Guarantor hereby unconditionally, absolutely and irrevocably guarantees the due and punctual performance of all covenants, agreements, terms, conditions and other obligations of the Lessee (including without limitation the payment of money and the specific performance of such obligations) under this Lease, the Consent and the Participation Agreement (the "Documents") and the transactions contemplated hereby and thereby (all such obligations are

called "Obligations"). In the event that the Lessee fails to perform any of the Obligations at the time such Obligation is required to be performed, the Guarantor shall forthwith perform or cause to be performed, such Obligation.

The Guarantor agrees that the Obligations may be extended, altered or modified, in whole or in part, without notice or further assent from it, and that it will remain bound hereunder notwithstanding any extension, alteration or modification of any Obligation.

The Guarantor waives presentation to, demand of payment or performance from and protest to the Lessee of any of the Obligations, and also waives notice of protest for nonpayment or nonperformance of any of the Obligations both monetary and nonmonetary in nature, regardless of any defenses or rights of setoff or counterclaims which the Guarantor or the Lessee may have or assert by reason of any past, present or future claims of the Lessee or the Guarantor against the Lessor under this Lease or the CSA or against the Builder, NAC or the Vendor or otherwise. The obligations of the Guarantor hereunder shall not be affected by (i) the failure of the Lessor or the Vendor to assert any claim or demand or to enforce any right or remedy against the Lessee under the provisions of any Document or any other agreement or otherwise; (ii) any extension or renewal of any thereof; (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Lease or of any other agreement, any assignment of this Lease, the sublease of any Unit or release of any other party; (iv) the failure of the Lessor or the Vendor to exercise any right or remedy against any other guarantor of the Obligations; or (v) the failure of the Guarantor to receive notice of any extension, alteration or modification of any Obligation, any Document or any future agreement relating to the Obligations.

The Guarantor further agrees that this undertaking constitutes a guarantee of payment when due (or performance when required, as the case may be) and not of collection.

The obligations of the Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including without limitation any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any Obligation,

any Document or otherwise. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of the Lessor or the Vendor to assert any claim or demand or to enforce any remedy under this Lease or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, wilful, as the result of actual or alleged force majeure, commercial impracticability or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of the Guarantor or which would otherwise operate as a discharge of the Guarantor as a matter of law.

The Guarantor further agrees that its undertakings hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations which are monetary in nature is rescinded or must otherwise be restored by the Lessor or the Vendor upon the insolvency, winding-up or reorganization of the Lessee or otherwise. In furtherance of the foregoing and not in limitation of any other right which the Lessor or the Vendor may have at law or in equity against the Guarantor by virtue hereof, upon failure of the Lessee to make any payment on any of the Obligations which are monetary in nature when and as the same shall become due as required under any Document, the Guarantor hereby promises to pay or cause to be paid to the Lessor or the Vendor in cash an amount equal to all such Obligations to the Lessor or the Vendor, as the case may be, and all costs of collection and enforcement of the Obligations, including reasonable counsel fees and expenses, promptly or upon receipt of written demand by the Lessor or the Vendor; provided, however, that the nonreceipt of notice or demand shall not preclude an Event of Default hereunder. In addition, in furtherance of the foregoing and not in limitation of any other right which the Lessor or the Vendor may have at law or in equity against the Guarantor by virtue hereof, upon failure of the Lessee to perform any of the Obligations which are nonmonetary in nature when the same shall be required to be performed under any document, the Guarantor hereby promises, and will, upon receipt of written demand by the Lessor or the Vendor, forthwith perform strictly in accordance with the terms of such Document, or cause to be so performed, for the Trustee and the Vendor all such Obligations required to be performed. The Lessor may proceed against the Guarantor hereunder without first or con-

temporarily proceeding against the Lessee.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first set forth above.

MHC, INC.,

by

\_\_\_\_\_  
President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

CONAGRA, INC.,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

CHEMICAL BANK,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

STATE OF NEBRASKA, )  
 ) ss.:  
COUNTY OF DOUGLAS, )

On this            day of            1980, before me personally appeared L. B. Thomas, to me personally known, who, being by me duly sworn, says that he is the President of MHC, INC., an Oregon corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF NEBRASKA, )  
 ) ss.:  
COUNTY OF DOUGLAS, )

On this                    day of                    1980, before me personally appeared L. B. Thomas, to me personally known, who, being by me duly sworn, says that he is Vice President of CONAGRA, INC., a Delaware Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK, )

On this                    day of                    1980, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, a New York banking corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires



# APPENDIX A TO THE LEASE

## Units Leased

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100-Ton 4,750 cubic foot Covered Hopper Cars	LO	1072	Butler, Pennsylvania	300	CAGX 700- CAGX 999	\$47,372	\$14,211,600	June 1980 at Butler, Pennsylvania

## APPENDIX B TO THE LEASE

Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>	<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>
1	108.0027%	36	112.9137%
2	108.2907	37	112.9207
3	108.5807	38	112.9137
4	108.8707	39	112.9047
5	109.1617	40	112.8957
6	109.4547	41	112.8637
7	109.7477	42	112.8307
8	108.8717	43	112.7957
9	109.1677	44	112.7377
10	109.4647	45	112.6787
11	109.7327	46	112.6187
12	109.9857	47	112.5637
13	110.2387	48	112.4877
14	110.4477	49	112.4107
15	110.6567	50	112.3197
16	110.8667	51	112.2267
17	111.0607	52	112.1327
18	111.2567	53	112.0177
19	111.4527	54	111.9007
20	111.6337	55	111.7827
21	111.8147	56	111.6437
22	111.9967	57	111.5037
23	112.1547	58	111.3607
24	112.2857	59	111.2227
25	112.4167	60	111.0677
26	112.4967	61	110.9107
27	112.5757	62	110.7417
28	112.6547	63	110.5707
29	112.7067	64	110.3977
30	112.7577	65	110.2067
31	112.8087	66	110.0137
32	112.8317	67	109.8187
33	112.8537	68	109.6047
34	112.8757	69	109.3897
35	112.9067	70	109.1717

<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>	<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>
71	108.9587%	109	96.7257%
72	108.7297	110	96.3247
73	108.4987	111	95.9197
74	108.2597	112	95.5107
75	108.0177	113	95.0957
76	107.7727	114	94.6777
77	107.5137	115	94.2547
78	107.2507	116	93.8257
79	106.9867	117	93.3927
80	106.7057	118	92.9557
81	106.4227	119	92.5227
82	106.1367	120	92.0857
83	105.8557	121	91.6457
84	105.5617	122	91.2097
85	105.2647	123	90.7707
86	104.9627	124	90.3267
87	104.6577	125	89.8797
88	104.3497	126	89.4287
89	104.0287	127	88.9737
90	103.7047	128	88.5157
91	103.3787	129	88.0537
92	103.0397	130	87.5867
93	102.6967	131	87.1237
94	102.3517	132	86.6607
95	102.0097	133	86.1937
96	101.6587	134	85.7347
97	101.3047	135	85.2717
98	100.9487	136	84.8047
99	100.5887	137	84.3377
100	100.2257	138	83.8667
101	99.8527	139	83.3907
102	99.4767	140	82.9157
103	99.0977	141	82.4357
104	98.7087	142	81.9517
105	98.3157	143	81.4707
106	97.9197	144	80.9937
107	97.5267	145	80.5127
108	97.1287	146	80.0437

<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>	<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>
147	79.56978	186	61.34178
148	79.0917	187	60.8727
149	78.6177	188	60.4117
150	78.1387	189	59.9417
151	77.6557	190	59.4627
152	77.1767	191	58.9777
153	76.6927	192	58.5027
154	76.2037	193	58.0187
155	75.7187	194	57.5487
156	75.2417	195	57.0687
157	74.7597	196	56.5787
158	74.2947	197	56.0997
159	73.8237	198	55.6107
160	73.3487	199	55.1127
161	72.8827	200	54.6247
162	72.4107	201	54.1267
163	71.9337	202	53.6197
164	71.4657	203	53.1037
165	70.9917	204	52.5987
166	70.5137	205	52.0827
167	70.0367	206	51.5787
168	69.5697	207	51.0647
169	69.0987	208	50.5407
170	68.6447	209	50.0277
171	68.1847	210	49.5047
172	67.7207	211	48.9717
173	67.2667	212	48.4497
174	66.8087	213	47.9167
175	66.3457	214	47.3757
176	65.8927	215	46.8237
177	65.4357	216	46.2817
178	64.9727	217	45.7307
179	64.5087	218	45.1897
180	64.0567	219	44.6387
181	63.6007	220	44.0777
182	63.1597	221	43.5267
183	62.7107	222	42.9657
184	62.2517	223	42.3957
185	61.8007	224	41.8347

<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>	<u>Casualty Payment Dates</u>	<u>Percentage of Vendee Purchase Price</u>
225	41.2647%	267	27.8917%
226	40.6847	268	27.7207
227	40.0937	269	27.5547
228	39.5137	270	27.3847
229	38.9227	271	27.2177
230	38.3427	272	27.0507
231	37.7517	273	26.8837
232	37.1517	274	26.7167
233	36.5607	275	26.5497
234	35.9597	276	26.3827
235	35.3487	277	26.2157
236	34.7477	278	26.0487
237	34.1367	279	25.8817
238	33.5147	280	25.6647
239	32.8837	281	25.5477
240	32.2617	282	25.3807
241	30.9397	283	25.2137
242	30.7957	284	25.0467
243	30.6477	285	24.8797
244	30.4967	286	24.7127
245	30.3617	287	24.5457
246	30.2237	288	24.3787
247	30.0817	289	24.2117
248	30.6467	290	24.0447
249	30.5177	291	23.8777
250	30.3857	292	23.7107
251	30.2387	293	23.5437
252	30.1017	294	23.3767
253	29.9617	295	23.2097
254	29.8197	296	23.0427
255	29.6747	297	22.8757
256	29.5257	298	22.7087
257	29.3877	299	22.5417
258	29.2457	300	22.3747
259	29.1007	301	22.2297
260	28.9667		
261	28.8277		
262	28.6867		
263	28.5297		
264	28.3777		
265	28.2217		
266	28.0587		

ANNEX D  
to the  
Conditional Sale Agreement

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[CS&M Ref. 4876-023]

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of April 1, 1980

Between

CHEMICAL BANK,  
Lessor,

and

LA SALLE NATIONAL BANK,  
as Agent

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ASSIGNMENT OF LEASE AND AGREEMENT dated as of April 1, 1980, between CHEMICAL BANK, a New York banking corporation (the "Lessor"), and LA SALLE NATIONAL BANK, a national banking association, as agent (the "Agent") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

The Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with PULLMAN INCORPORATED (Pullman Standard Division) (the "Builder") and NORTH AMERICAN CAR CORPORATION ("NAC") providing for the sale to NAC by the Builder and the conditional sale to the Lessor by NAC of such units of railroad equipment (the "Units") described in Annex B to the CSA as are delivered to and accepted by the Lessor and settled for thereunder.

MHC, INC. (the "Lessee"), CONAGRA, INC. (the "Guarantor"), and the Lessor have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the leasing by the Lessor to the Lessee of the Units.

The Lessor will assign certain of its rights under the Lease to the Agent in order to secure the obligations of the Lessor under the CSA and as an inducement to the Investors (as defined in the Participation Agreement) to invest in the CSA Indebtedness (as defined in Section 4.3(b) of the CSA).

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

1. Assignment by Lessor. The Lessor hereby assigns to the Agent, as collateral security for the payment and performance of the obligations of the Lessor under the CSA, all the Lessor's right, title and interest, powers, privileges and other benefits under the Lease, including without limitation the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee and the Guarantor under or pursuant to the provisions of the Lease, whether as rent, casualty payment, indemnity, liquidated damages or otherwise (except any amount of indemnity or other amounts payable to the Lessor pursuant to § 6, 12, 20 or 30 of the Lease which is not required to be paid to the Vendor under the CSA and

except any liability insurance proceeds received by the Lessor pursuant to § 7 of the Lease) (such moneys are called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Agent in its own name or in the name of its nominee or in the name of the Lessor or as its attorney to demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease and to enforce compliance by the Lessee and the Guarantor with all the terms and provisions thereof.

The Agent agrees to accept any Payments made by the Lessee and the Guarantor for the account of the Lessor pursuant to the Lease. To the extent received, the Agent will apply such Payments to satisfy the obligations of the Lessor under the CSA and, so long as no event of default under the CSA or event which with notice or lapse of time or both would constitute an event of default thereunder shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is received by the Vendor (or on the next succeeding business day if funds are not timely received by the Vendor) to satisfy such obligations of the Lessor, by bank wire to the Lessor at such address as may be specified to the Agent in writing, and such balance shall be retained by the Lessor. If the Agent shall not receive any Payment when due, the Agent shall immediately notify the Lessor by telephone and confirm such notice by telegram to the address set forth in the Lease; provided, however, that the failure of the Agent to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the CSA, except that, notwithstanding the provisions of the CSA, the right to cure a monetary default in accordance with the CSA shall not be terminated until the earlier of (a) three business days after the Agent shall have sent notice to the Lessor by ~~telegram (hand delivered)~~ that an Event of Default under § 13.1(A)(1) of the Lease has occurred (such period to commence on the date the ~~telegram~~ is sent without regard to when received) or (b) five business days after an Event of Default under § 13.1(A)(1) of the Lease shall have occurred.

2. No Transfer of Lessor's Obligations. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Agent to or transfer or in any way modify the liability of the Lessor under the Lease. Notwithstanding this Assignment or any subsequent assignment, all obligations of the

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Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns against and only against the Lessor or persons other than the Agent.

3. Obligations of Lessor. The Lessor will faithfully perform each obligation, covenant and agreement which the Lease provides is to be performed by the Lessor and, without the written consent of the Agent, will not anticipate the rents under the Lease or waive or in any manner release or discharge the Lessee or the Guarantor thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee or the Guarantor, as the case may be (including without limitation the obligation to pay the rents in the manner and at the time and place specified therein), or enter into any agreement amending, modifying or terminating the Lease. Any amendment, modification or termination of the Lease without the Agent's consent shall be void; provided, however, that the Vendor shall be deemed to have consented to any agreement in writing between the Lessee and the Lessor increasing or decreasing the rentals and casualty values payable pursuant to §§ 3, 7 and 30 of the Lease so long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Lessor under the CSA. If an event of default should occur under the CSA which would entitle the Vendor to terminate the Lease, the Vendor may terminate the Lease or rescind its termination without affecting the indemnities which by the provisions of the Lease survive the expiration of its term, all as provided in the Lease.

4. Actions with No Event of Default. So long as no event of default under the CSA or any event which with notice or lapse of time or both would constitute an event of default has occurred and is continuing, the Agent will not exercise or seek to exercise any of the rights, powers, privileges, authorizations or benefits which are assigned by the Lessor to the Agent by this Assignment, except the right to receive and apply the Payments as provided in Section 1 hereof, and the Lessor may exercise or seek to exercise its rights, powers, privileges and remedies arising out of § 13.1(a) of the Lease; provided, however, that the Lessor shall not terminate the Lease or otherwise exercise or seek to exercise any rights, powers, privileges and remedies arising out of § 13.1(b) of the Lease without the prior written consent of the Agent.

5. Agent as Lessor's Attorney. The Lessor hereby constitutes the Agent the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor or

otherwise) to demand and receive any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee and the Guarantor with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Agent may deem to be necessary or advisable.

6. Reversion to Lessor. Upon the full discharge and satisfaction of all sums due from the Lessor under the CSA, this Assignment and all rights herein assigned to the Agent shall terminate and all right, title and interest of the Agent in and to the Lease will revert to the Lessor. Promptly following such full discharge and satisfaction, the Agent will advise the Lessee and the Guarantor in writing that all sums due from the Lessor under the CSA have been fully discharged and satisfied and instruct the Lessee and the Guarantor that no further payments under the Lease are to be made to the Agent.

7. Further Assurances. The Lessor will from time to time execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Agent in order to confirm or further assure the interest of the Agent hereunder.

8. Assignment by Agent. The Agent may assign all but not less than all of the rights assigned to it hereby or arising under the Lease, including without limitation the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

9. Governing Law. This Assignment will be governed by and construed in accordance with the laws of the State of New York, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

10. Notices. The Lessor shall cause copies of all notices received in connection with the Lease and all Payments hereunder to be promptly delivered or mailed to the Agent at its address set forth in Article 22 of the CSA or at such other address as the Agent may designate. The Agent shall furnish to the Lessor such information as shall be

reasonably requested by the Lessor in order to permit the Lessor to act under the Lease or to prepare its tax returns.

11. Headings. Section headings have been provided for convenience only and shall not affect the interpretation of this Assignment.

12. Execution. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first set forth above, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first set forth above.

CHEMICAL BANK,

by

[Corporate Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary

LA SALLE NATIONAL BANK,

by

[Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary

STATE OF NEW YORK, )  
 ) ss.:  
 COUNTY OF NEW YORK,)

On this            day of            1980, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, a New York banking corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

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Notary Public

[Notarial Seal]

My Commission expires

STATE OF ILLINOIS, )  
 ) ss.:  
 COUNTY OF COOK, )

On this            day of            1980, before me personally appeared Roland K. Weber, to me personally known, who, being by me duly sworn, says that he is a Vice President of LA SALLE NATIONAL BANK, a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

---

Notary Public

[Notarial Seal]

My Commission expires

## CONSENT AND AGREEMENT

MHC, INC., an Oregon corporation (the "Lessee"), and CONAGRA, INC., a Delaware corporation (the "Guarantor"), the lessee and the guarantor named in the Lease of Railroad Equipment (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), each hereby acknowledges receipt of a copy of the Lease Assignment and consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all Payments (as defined in the Lease Assignment) payable under the Lease directly to LA SALLE NATIONAL BANK, as agent (the "Agent"), the assignee named in the Lease Assignment, at 135 South LaSalle Street, Chicago, Illinois 60690, attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Agent);

(2) the Agent shall be entitled to the benefits of and to receive and enforce performance of all the covenants to be performed by the Lessee or the Guarantor under the Lease as though the Agent were named therein as the Lessor; and the Agent shall not by virtue of the Lease Assignment be or become subject to any liability or obligation under the Lease or otherwise; and

(3) without the prior written consent of the Agent, the Lease shall not be terminated or modified nor shall any action be taken or omitted by the Lessee or the Guarantor which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

MHC, INC.,

by

\_\_\_\_\_  
President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

CONAGRA, INC.,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary